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MEMOIRS

OF THE

LIFE AND WRITINGS

OF

THE HONOURABLE

HENRY HOME OF KAMES,

ONE OF THE SENATORS OF THE COLLEGE OF JUSTICE, AND ONE OF THE LORDS COMMISSIONERS OF JUSTICIARY IN SCOTLAND:

CONTAINING

SKETCHES

OF THE

PROGRESS OF LITERATURE AND GENERAL IMPROVEMENT IN SCOTLAND DURING THE GREATER PART OF THE EIGHTEENTH CENTURY.

BY THE HONOURABLE

ALEX. FRASER TYTLER OF WOODHOUSELEE,

ONE OF THE SENATORS OF THE COLLEGE OF JUSTICE, AND ONE OF THE LORDS COMMISSIONERS OF JUSTICIARY IN SCOTLAND.

C'est pécher contre le Public que de taire la vertu des Hommes illustres: C'est envier l'honneur que méritent les uns, et ravir aux autres le bonheur de les imiter.

Paneg. de Sully, par De Chevry.

SECOND EDITION,

IN THREE VOLUMES.

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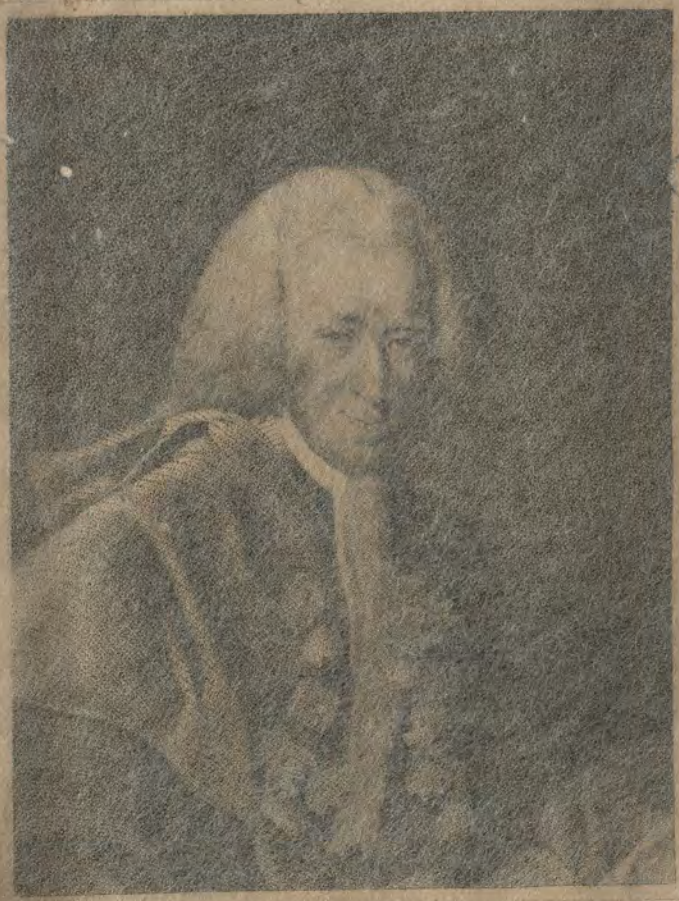

Engraved by [illegible]

The Hon: Henry Home of Kaimes

From an original Drawing by [illegible] Martin,
in the possession of Lord Woodhouse Lee

Published March 12th 1807 by T. Cadell & W. Davies, Strand London.

PREFACE

TO THE FIRST EDITION.

As the history of the eminent Person, whose life is the subject of the following Work, is intimately connected with every species of improvement, whether of an intellectual or a political nature, that took place in Scotland during his age, the task incumbent on his biographer, will at once appear to be much more comprehensive in its plan, and various in its objects, than that which ordinarily belongs to this spe- [illegible] To fulfil his duty in its amplest [illegible] nd measure, the author ought not only to delineate the life of an

individual Lawyer, Philosopher, Political Economist, and Critic; but to exhibit the moral and political character of the Times in which he lived, and to detail the progress of the *Literature*, *Arts*, *Manners*, and *General Improvement* of SCOTLAND, during the greater part of the eighteenth century.

Aware of the magnitude and difficulty of the task thus conceived in its utmost extent, the present writer declined engaging in it, for a long period of time, while there appeared any probability of its falling into abler hands:—And when at length, after a fruitless expectation of more than twenty years, he took it upon himself, he was very far from entertaining such confidence in his own abilities, as to deem them at all equal to its complete accomplishment. What he proposed to execute, therefore, and what he has executed, he wishes to be regarded in no other light than as a [illegible] imperfect sketch of an interesting [illegible]; which

neither his few hours of leisure, in the intervals of a laborious public duty, permitted; nor, as he is conscious, his powers enabled him, to finish in its full proportions, or with ability equal to its importance.

Some circumstances, however, contributed to point out this task to the writer in the light of a particular duty; and, at the same time, gave him certain advantages for its execution, which have not always been enjoyed by the biographers of distinguished men. He had the happiness, for many years of his life, to be intimately acquainted with Lord Kames, and to possess a very [illegible] share of his friendship and confidence. Patronized by him in his early years, [illegible] the freedom of a partner in [illegible] Kames, and even of an associate in [illegible] literary labours, he had the [illegible]ity of discerning his character [illegible]ing it in all that variety of [illegible] are afforded by familiar in-

tercourse, where the temperament itself, (as was peculiarly his nature,) was altogether open, ingenuous, and undisguised. Though more than fifty years younger than his venerable friend, who had been the companion and friend of his father,—he could say, as CATO of QUINTUS MAXIMUS, "*Senem adolescens ita dilexi ut æqualem: "erat enim in illo viro comitate condita gravitas; nec senectus mores mutaverat.*"

To this personal advantage, was added, the most liberal and unreserved communication of materials, from Mr HOME DRUMMOND, the only son of LORD KAMES; who furnished the writer, not only with a very ample epistolary correspondence, of which abundant use has been made in these Memoirs,—and which forms not the least valuable part of the work,—but with many particulars relative to his Fat[illegible] character, which his own kn[illegible] and that of his family, could s[illegible]

In addition to these sources of information, it would be ingratitude in the author, were he to omit mentioning his obligations to a very learned and ingenious friend *, an old and intimate acquaintance of Lord Kames; for a variety of curious matter, illustrative of his Lordship's character, the characters of his cotemporaries, and the manners of his age, which that gentleman had studied with the most discriminating sagacity.

In digesting the plan of the following work, that easy and convenient mode of writing which the French term *Mémoires pour servir à l'histoire*, and which they have very happily employed in works of a similar nature, seemed the best form for such an undertaking. It is not subjected to the laws of regular history, or of biography, strictly so termed: It admits easily of di-

* John Ramsay Esq. of [illegible] county of Perth.

gressions, and is thus suited to the utmost variety of subjects: It professes not to exhaust the topics of which it treats; but rather to open and introduce them to the reader:—And above all, it allows a varied tone of composition, and at times, a familiarity of style, which greatly smooth the labour of a lengthened work. Of all these privileges, it will be seen, that the writer has amply availed himself:—greatly indeed to his own ease; yet, as he would willingly hope, not often to the offence of his readers.

With these few preliminary observations, he commits the work implicitly to the candour and indulgence of the public.

ALEX. FRASER TYTLER.

Woodhouselee,
September 24. 1806.

N. B. In this new Edition, the Appendixes belonging to each volume are printed together, and form the Third volume of the Work.

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MEMOIRS

OF

LORD KAMES.

BOOK I.

CHAPTER I.

Mr Home's birth—and education.—Classical learning little cultivated at that time.—Causes of its decline in Scotland.—Mr Home's first professional views.—His ardour of study.—No regular institution at that time for the study of the Law.—A more laborious course of study then pursued.—Importance of general erudition to the profession of the Law.—Mr Home's attention turned to Metaphysics.—His correspondence with Baxter—and with Samuel Clarke.

HENRY HOME, the son of George Home of Kames, in the county of Berwick, North Britain, was born at Kames, in the year 1696. He was descended from an ancient and honourable family; being, on his father's side, the great-grandson of Sir John Home of

Mr Home's birth—

BOOK I.

Renton, whose ancestor was a cadet of the family of the Earls of Home, and who held the office of Lord Justice-Clerk in the reign of King Charles II. His mother was a daughter of Mr Walkinshaw of Barrowfield*, and grandaughter of Mr Robert Baillie, Principal of the University of Glasgow, the author of a learned work on History and Chronology, and of a very curious Journal of his own Times, in a series of letters from 1637 to 1662†. The father of Mr Home, a country gentleman of small fortune, though the heir of an estate which had once been considerable, had never been bred to any profession.

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* Another daughter of Mr Walkinshaw was married to Mr Campbell of Succoth, grandfather to the Right Honourable Ilay Campbell, Lord President of the Court of Session. Her brother, Mr Walkinshaw, having been engaged in both the rebellions 1715 and 1745, was confined for some time in the Castle of Stirling; from whence he escaped by the courage and address of his wife, a sister of Sir Hugh Paterson of Bannockburn, who exchanged clothes with him, and remained a prisoner in his stead. This remarkable woman, *splendide mendax, et in omne ævum nobilis*, lived to the age of ninety, in the full possession of her faculties, and of the esteem of all who knew her.

† For a further account of Principal Baillie, see Appendix, No. I., among the notices of Scotsmen eminent for literature, in the period from the end of the sixteenth to the beginning of the eighteenth century.

CHAP. I.

He resided on his paternal lands, and discharged the duties of an active magistrate in the commission of the peace; but from the necessary expences of a numerous progeny, and the indulgence of a taste for living beyond his income, he had considerably reduced his fortune; so that his son Henry, on entering the world, found that he had nothing to trust to but his own abilities and exertions. This circumstance, apparently unfavourable, was always most justly regarded by him as the primary cause of his success in life. If the remark of the satirist, *Haud facilè emergunt, quorum virtutibus obstat, Res angusta domi*, be true in one sense, it is certain, that, in another, the converse of the maxim is equally just. To a man of talents, and of moderate activity, the possession of a competence in early life is very far from being an advantage. In the annals, both of science and literature, and the departments of professional employment, small is the proportion of those eminent men on whom fortune had bestowed hereditary affluence.

He was educated at home under a private tutor of the name of Wingate; of whose ca- and education.

BOOK I.

pacity for infusing knowledge he was never heard to say much in commendation; but an anecdote which he delighted to relate, shews that he retained a lasting remembrance of his severity. Wingate had by industry and parsimony made a little money, which he employed in making a small purchase of land; and being anxious to guard against any defects or insufficiency of his title-deeds, he repaired for advice to his former pupil, who was at that time in the height of his reputation as a lawyer. Mr Home, after examining the parchments, and turning them over again and again, addressed himself to Wingate with great anxiety of countenance; "Pray, Sir, is your bar-"gain finally concluded?"—"Not only so," said Wingate, "but the price is paid."—"Good heavens!" said Mr Home, "how "unlucky is this!" and here, with infinite ingenuity, he began to point out numberless flaws, which would lead to endless litigation; till at length perceiving the sweat distilling in large drops from the brows of the pedagogue; "Mr Wingate," said he, "you "may remember how you made me smart "in days of yore for very small offences:

"Now, I think, our accounts are cleared: "Take up your parchments, and go home "with an easy mind; your titles are excel- "lent."

The instruction which young Home received from Wingate was probably only elementary; for it is certain that he found it necessary, when he had chosen a profession connected with literature, to apply himself with great assiduity to the study of the Latin and Greek languages; and in the former of these at least, he arrived at as much proficiency as is commonly attained by those who, with complete classical education, are not just entitled to the rank of profound scholars. The observations on classic authors which occur in his critical writings, are much more directed to the sentiments, than to the language and style of their works; and the contempt with which he always treated the labours of verbal commentators, affords a pretty certain presumption, that he possessed but in a moderate degree, that knowledge which he so much undervalued.

BOOK I.

Classical learning little cultivated at that time.

It must indeed be allowed, that a taste for classical learning was then at a very low ebb in Scotland. The Latin Muses, from the date of the *Deliciæ Poëtarum Scotorum*, that is, from the days of ARTHUR JOHNSTON*, seem almost to have deserted the northern part of our island. The learned RUDDIMAN, piqued at a remark of PETER BURMAN, (in his Preface to the Leyden edition of the *Works of Buchanan*), on the inconsiderable number of Latin writers, especially in poetry, whom Britain had produced, in comparison with the continental kingdoms; endeavoured to vindicate his native

* Arthur Johnston was born in 1587, five years after the death of Buchanan, whom he had the courage to emulate as a translator of the Psalms: Nor was the attempt greatly beyond his powers; for although, taken as a whole, his version is certainly inferior, (as indeed what modern has, in Latin poetry, equalled Buchanan?); yet, there are a few of his Psalms, which, on comparison, will, perhaps, be found to excel the corresponding paraphrase of his rival. I would instance the 24th, 30th, 42d, 74th, 81st, 82d, 102d, and, above all, the 137th. No man brings at all times the same spirits to his task; but every lengthened labour is a task; and, in his happier moments, an inferior artist may sometimes excel the work of a greater master, executed in a less fortunate hour.

country from its share in this degrading censure; and, in that view, published, in 1727, a small volume, entitled, *Selecta Poëmata Archibaldi Pitcarnii et aliorum, &c.* But this very attempt affords a demonstration of the truth of the proposition it was meant to disprove; for the poems of Pitcairne comprise almost all that is of any merit in the volume: and even these, from the nature of their subjects, temporary political satire, the commemoration of local incidents, or allusions to private characters, have none of the requisites to found either a general or a permanent reputation*.

* The poems of Pitcairne, which have the merit of excellent Latinity, and easy and spirited numbers, must have had a poignant relish in his own age, from the very circumstances which render them little interesting to ours. They might yet be redeemed from oblivion by a good Commentary; and their merits entitle them to that mark of attention from the learned: but the task would be a difficult one; and the time is fast approaching when it may be altogether impracticable. That most able antiquarian, and excellent critic, the late Lord Hailes, amidst the great variety of his literary amusements, had thought of publishing the Poems of Pitcairne, with such a Commentary; and he has given a specimen of it in the *Edinburgh Magazine and Review* for February 1774, which excites our regret that he carried the design no further. One qualification, however, his Lordship certainly wanted for that

BOOK I.

Causes of its decline in Scotland.

THE gradual decline of classical learning in Scotland from the period before mentioned, is to be accounted for chiefly from the political circumstances of the country. The gloomy, fanatical spirit which arose in the reign of Charles I. was hostile to every elegant accomplishment. The seminaries of learning were filled by the champions of the *Solemn League and Covenant*, who were at much more pains to instil into their pupils, the anti-monarchical principles of Knox, Buchanan and Melvil, and to inculcate the independence of the kingdom of the saints on all earthly potentates and powers, than to point their attention to the energetic eloquence of Cicero and Demosthenes, the simple majesty of Livy, the ease and amenity of Xenophon, the playful wit and *naiveté* of Horace, or the chastened elegance of Virgil. The manners of the Scots underwent not the same change at the Re-

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undertaking, namely, a congeniality of opinions with his author. The strong Tory, anti-Revolution, and anti-Union prejudices of the Poet, would have met with no quarter from the zeal of the Critic, equally ardent on the opposite side of the question, and there would have been a perpetual war betwixt the author and his commentator.

storation, as those of their southern neighbours. The spirit of the times, was, if possible, more fanatical in the reign of Charles II. than in that of his father; and the disorderly state of the country from the rebellion of the Covenanters, was still further increased by the civil commotions consequent on the Revolution*. In the succeeding age, which saw the Union of the kingdoms, a new spirit arose in Scotland, which, however favourable to national prosperity, in the common acceptation of the term, had no tendency to promote the taste for ancient learning or classical studies. The participation to which Scotland was now admitted in the commerce of England with foreign States, and the free interchange of the manufactures of the two countries, excited a wonderful ardour for every species of commercial occupation. The Scottish gentry, forgetting that pride of family which had hitherto been their characteristic, and which, as in ancient

* A few instances, however, may be mentioned of Scotsmen of uncommon erudition, who threw some lustre on this age of comparative darkness: Of these the reader will find some short biographical notices in the Appendix, NO. I.

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Rome, interposed an impassable barrier between the higher and lower classes of the community, instead of bestowing on their sons a learned education, which was formerly the honourable badge of their condition, now threw them into the Shop or the Counting-house, with no other preparatory accomplishment than what was merely necessary for the function of a clerk or a book-keeper. Classical learning was therefore confined to the few who were destined for the learned professions; of whom the number became daily the more limited, as new, and easier, and shorter paths were opened to wealth and distinction.

Mr Home's first professional views.

It was owing to these prevailing notions of the times, that the father of Mr Home, who probably had never felt the defects of his own education, saw no necessity for bestowing on his son the tedious and expensive discipline of an University. Young Home, with no other stock of learning than what he had acquired from Mr Wingate, was, about the year 1712, bound by indenture to attend the office or chambers of a writer to the Signet in Edinburgh. This profession be-

ing of a liberal nature, was, at that time, always filled by gentlemen of good birth; and it was deemed a very useful piece of education, even for the sons of the first families, who were destined to inherit large estates, to attend the writing-chamber for a few years, and thus qualify themselves for conducting their own affairs with intelligence and discretion *. This discipline corresponded to that which is so earnestly recom-

* That this branch of education was a characteristic of the Scottish gentry, in a former and not a distant age, we have the honourable testimony of Sir William Blackstone: and it were earnestly to be wished, that the praise were equally merited in the present day, as we believe it to have been at the time when it was given: "The science of the laws and constitution of our own country, is a species of knowledge in "which the gentlemen of England have been more remarkably deficient than those of all Europe beside. In most of "the nations on the Continent, where the civil or imperial "law, under different modifications, is closely interwoven with "the municipal laws of the land, no gentleman, or, at least, "no scholar, thinks his education is completed till he has "attended a course or two of lectures, both upon the Institutes of Justinian, and the local constitutions of his native "soil, under the very eminent professors that abound in their "several Universities. And in the northern parts of our own "island, where also the municipal laws are frequently connected with the civil, it is difficult to meet with a person of "liberal education, who is destitute of a competent know-

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mended by the great Lord Clarendon*, as equally beneficial to an English gentleman with an University education; the attendance on the *Inns of Court*. With Mr Home, however, it was preparatory to the profession of a writer or solicitor before the Supreme Court, to which it appears that his views were at first directed; when they received, from a trifling incident, a bias to an ampler field of occupation. One winter's

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" ledge in that science, which is to be the guardian of his na-
" tural rights, and the rule of his civil conduct." BLACKSTONE'S *Comment.* vol. i. Introd. § 1.

It is curious to remark, that among the many proofs of the liberal and enlightened policy of the Scottish Monarch James I., one is an edict mentioned by Hector Boece, " *Ne*
" *cuiquam insignem hæreditatem adeundi jus esset, qui prorsus*
" *juris civilis aut municipalis ignarus esset.*" BOET. *Hist. Scot.* lib. 17. See likewise an act of the fifth Parliament of King James IV., which ordains, " That all Barons and Free-
" halders that ar of substance, sall put their eldest sonnes and
" aires to the schules fra they be six or nine yeires of age,
" and till remain quhill thay be competentlie foundit, and
" have perfite Latine: And thairafter to remaine three yeires
" at the schulis of *art* and *jure*, swa that thay may have
" knawlege and understanding of the Lawes; throw the
" qhilks justice may remaine universallie throw all the
" Realme."

* See his *Dialogue on Education*.

evening, Home's master sent him with some papers to the house of Sir Hew Dalrymple, then President of the Court of Session, who lived in a sort of suburban villa, at the end of Bristo Street. He was shewn into the parlour, a very elegant apartment, where a daughter of the President, a beautiful young lady, was performing a piece of music on the harpsichord; while the venerable Judge sat by her, with his book on the table. The music was suspended, and a short conversation ensued on the business to which the papers related; in which the young man acquitted himself so much to the President's satisfaction, as to draw from him a very handsome compliment on his knowledge and proficiency in the law. The conversation then turned to general topics, and was prolonged with much pleasure; while the young lady made tea, and afterwards, at her father's desire, sung, and played some Scots airs on the harpsichord. The youth was struck with every particular of the scene in which he had borne a part; and his ardent mind, as he was wont himself to relate, caught instant fire from the impression. "Happy the man," said he to himself,

BOOK I.

"whose old age, crowned with honour and "dignity, can thus repose itself after the "useful labours of the day, in the bosom of "his family, amidst all the elegant enjoy-"ments, that affluence, justly earned, can "command! Such are the fruits of emi-"nence in the profession of the law." From that moment Mr Home determined to abandon the more limited occupation of a *Writer*, and qualify himself for the function of an Advocate before the Supreme Courts; to which the employment of the past years formed a very useful preparation.

His ardour of study.

It was now, that, by the testimony of his cotemporaries, he began to apply himself with unwearied diligence to repair the defects of his domestic education. He resumed the study of the Latin and Greek languages, to which he added French and Italian *. Conscious, that of all the liberal occupations,

* Mr Boswell mentions, on Lord Kames's information, that he had great assistance in these studies from a nonjurant clergyman of the name of Anderson, who had been educated at St Andrew's, and was an excellent scholar, and a man of liberal and polished manners. *Mr Boswell's MSS.*

the profession of a barrister is that which requires, to the attainment of eminence, the greatest variety of knowledge, and the widest range of scientific acquirements, he applied himself to the study of Mathematics, Natural Philosophy, Logic, Ethics, and Metaphysics. These pursuits, which he followed at the same time with the study of the law, afforded, independently of their own value, a most agreeable variety of employment to his active mind.

No regular institution established for the study of the Law.

The sciences of the Roman law, and the municipal law of Scotland, were not, till the year 1710, taught by a regular institution or system of lectures, in any of the Scottish Universities. In that year, Mr James Craig, Advocate, was appointed Professor of Civil Law in the College of Edinburgh, with the endowment of a small salary from the Faculty of Advocates. The civil law, which forms a most essential part of the education of a Scottish Advocate, as being the basis of the municipal law in all matters not depending on feudal principles, was, previously to that time, acquired either by private study, or by resorting to the foreign Universities,

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particularly those of Utrecht, Leyden, Halle, and Groningen. It was unsuitable to Mr Home's circumstances to prosecute the latter plan: and, indeed, to a mind like his, the confinement to a regular method and system of tuition is perhaps less advantageous, than the exercise of its native and unassisted efforts, which, the greater are the difficulties it has to surmount, are always the more vigorous and the more successful. In fact, it has been frequently observed, that those whom nature has destined to be the teachers and instructors of mankind, have not been the most willing pupils. They receive with suspicion every thing that is announced in the shape of a *dogma*: they have always a stronger propensity to scrutinize and impugn, than to subscribe to the doctrines of a preceptor; and every task is either submitted to with reluctance, or indignantly resisted as fettering the free progress of the understanding. In the character I am now describing, this was a predominant feature. He may truly be said to have been his own instructor in all his mental acquisitions; and his common mode of study was not so much to read what had

been written or taught upon the subject, as to exercise his mind in earnest and patient investigation; tracing known or acknowledged facts to principles, and thence ascending to general laws. On many subjects of speculative inquiry, he is therefore justly entitled to the name of a Discoverer; as his tenets and opinions were truly the result of his own investigation, unassisted by the researches of others; though, from this last circumstance, it has also frequently happened, that he has announced as his own what had before been given to the world by preceding authors, whose writings had not fallen under his observation.

The knowledge of the law of Scotland was, in those days, usually acquired by private study*; that is, by the perusal of

* Before the institution of a professorship of the Municipal Law of Scotland in the University of Edinburgh, which took place in 1710, some members of the Faculty of Advocates gave lectures in their own houses to pupils, on that science. Of these the most distinguished were Mr Robert Craigie, who afterwards attained to the highest honour in his profession, the Presidency of the Court of Session; Mr John

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Lord Stair's *Institutions*, the useful compendium under the same title by Sir George Mackenzie, the statute laws, and the reports or decisions of the Court of Session: and the forms of judicial proceedings were learned by the daily practice in the Supreme Court. It was likewise customary for the student of law to attach himself to some of the ablest and best employed Advocates, who allowed him the privilege of attending all his consultations, where he had the benefit of hearing his patron's opinions on nice and intricate cases, or on disputed points of law; and was frequently employed by him in the arranging and analyzing of processes, which it was not the custom at that time, as now, for the solicitor or attorney to reduce into the form of memorial or brief for the counsel. To which of the eminent Advocates of those times Mr Home attached himself for this useful instruction, I cannot with certainty affirm, but have reason to believe it was to Mr Patrick Grant, afterwards

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Spottiswoode, grandson of President Spottiswoode; Mr James Leslie, the pupil and correspondent of Voet &c.

a Judge of the Court of Session, by the title of Lord Elchies, one of the ablest lawyers of his time, and in the greatest practice as a barrister *.

* On this subject, the following anecdote was taken by Mr Boswell from Lord Kames's own mouth, "Your grandfather, Mr James Boswell of Auchinleck, (said Lord Kames,) was one of the best lawyers of his time. I had no other acquaintance with him, than what people come to have from daily seeing each others faces, and walking in the outer hall; but I thought I might venture to ask his opinion on a case which puzzled me, and I took courage and stated my case to him. "Come along (said he,) my young friend, "let us sit down together on the benches. This is a pretty "difficult point, and I must think of it a little." He did so, and then gave me his opinion and his reasons with great distinctness, and in a frank and kindly way; I afterwards very frequently applied to him, and always met with the same reception. Some years afterwards, when he had grown old, and felt the symptoms of decay, he one day took me aside, and said to me, "Harry, I have given you my best advice "on many occasions; I must now ask your help in return." He then stated a difficult point of law, of which I gave him an opinion that satisfied him. I was glad to be able thus to return his kindness, though it was in some degree a melancholy pleasure. When he had given over attending the Court, he was frequently consulted at home; and I remember the last time I saw the worthy man at his chambers, when the consultation was over, he said to me "Harry, you and I "are now old friends, and perhaps we may not have many "more meetings, you must stay and drink a bottle of

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A more laborious course of study then pursued.

From the writings of the eminent Scottish lawyers of the seventeenth century, as the *Institutions* of the Viscount of Stair, the *Doubts* of Lord Dirleton, and the *Decisions* of Durie and Fountainhall, we cannot fail to perceive that those great Judges possessed a much more extensive acquaintance with the foreign commentators on the Roman law, and with the writers on the public law of Europe, than seems to have been thought necessary by their successors to accomplish them for the duties either of an Advocate or of a Judge. We should be apt to deem it pedantry in the present day either from the Bench or the Bar, to quote the authorities of Accursius, Bartolus, Alciatus, Cujacius, Zoesius, &c. who were constantly in the mouths of the Judges and Lawyers of the period before mentioned. It would certainly be very presumptuous to affirm, that the knowledge gained by so much study was of no real advantage, from the circumstance of a great part of the dis-

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"Madeira with me." I did so, and we were very happy together. He was a grave man, but very kind in his manners: a sound and solid lawyer, though slow."—*Mr Boswell's MS.*

cussions which fill those ponderous volumes, being employed in frivolous and sophistical distinctions, or in the accumulating of authorities, and the laborious balancing of contending opinions: for even the long-continued exercise of the mind on the topics of jurisprudence, which the perusal of those volumes required, could not fail to impress more deeply on the memory the various doctrines of the law, and to sharpen the understanding, and render more perfect its discriminating power. So far the studies of our forefathers were certainly beneficial; and it were to be wished, that instead of treating them with ridicule, we bestowed a greater portion of attention on the commentators on the Pandects, and the writers on General Jurisprudence. It was that species of instruction which formed those great Judges I have mentioned; whose opinions are now regarded as grave and weighty authorities in the law; an eminence and respect to which, in all probability, they had never attained, but for that now so much neglected erudition.

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Importance of general erudition to the profession of the law.

But while we allow the usefulness of those studies to a certain extent, it must be admitted, that there are others no less important; and as the term of preparatory instruction for the profession of the law, as well as every other, is limited to a few years, it deserves seriously to be weighed, whether a considerable part of that time may not be more profitably employed in the acquisition of general knowledge; the elements of the sciences, as Physics or Natural History, the principles of Mechanics and Mathematics, and the elegant studies connected with the Belles Lettres and Criticism. It is to entertain a most narrow and illiberal view of the profession of a barrister, to account a knowledge of the laws, of cases and reports, and of the forms of judicial proceedings, the sum of that learning which is necessary for the discharge of his duties, or the attainment of eminence in his vocation. This profession, more than any other, requires not only an enlarged acquaintance with human nature, in the knowledge of the passions and affections of the mind, (a knowledge not to be gained but by the study of philosophy;) but it demands an

extensive information of the various arts and sciences which constitute the occupations of mankind, and of course give origin to a very great proportion of those legal questions which occupy the courts of justice*. Moreover, the talent of elocution, on which the professional eminence of a lawyer chiefly depends, is incredibly improved by an acquaintance with elegant literature; which not only instructs the student in the rules of rhetoric and of good composition, and supplies him with inexhaustible stores of apposite and beautiful illustrations of his subject, but presents the most correct and exquisite models for his imitation: And finally, what is far superior

* "*Mea quidem sententia*, (says Cicero,) *nemo poterit esse* "*omni laude cumulatus orator, nisi erit omnium rerum mag-* "*narum atque artium scientiam consecutus.—Sic censeo nemi-* "*nem esse in oratorum numero habendum, qui non sit omnibus* "*iis artibus quæ sunt libero homine dignæ perpolitus.*" (*De Oratore, lib.* 1.) And again more fully: "*Quoniam dicendi* "*facultas non debet esse jejuna atque nuda, sed aspersa atque* "*distincta multarum rerum jucunda quadam varietate, est boni* "*oratoris multa auribus accepisse, multa vidisse, multa animo* "*et cogitatione, multa etiam legendo percurrisse,—nulla in re* "*tironem ac rudem, nec peregrinum atque hospitem, in agendo* "*esse debere.*"—Ibid.

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to every other advantage arising from those elegant studies, and from a general acquaintance with science, is the dignity and elevation of mind which is the fruit of that knowledge; an endowment which raises its possessor above every mean and sordid feeling incident to his profession; which preserves unvitiated every moral distinction, amidst the daily exercise of an art too often employed to confound and obliterate them; and is the parent of that ingenuous manliness of character which asserts its own superiority, and compels respect from those meaner souls, whom the tide of fortune has lifted up to honours, or exalted into stations to which their merits had no pretensions *.

The professional occupations of the best-employed lawyer, or the most distinguished judge, cannot fill up every interval of his time. The useful respite of vacation, the hours of sickness, the surcease of employment from the infirmities of age, all necessarily induce

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* See, particularly, on this latter effect of a taste for literature in professional men, a very elegant and ingenious paper, from the pen of Mr Mackenzie. *Lounger*, No. 100.

seasons of languor, against which a wise man would do well to provide a store in reserve, and an antidote and cordial to cheer and support his spirits. In this light, the pursuits of science and of literature, afford an unbounded field, and endless variety of delightful occupation: and even in the latest hours of life, the reflection on the time thus spent, and the anticipation of an honourable memorial in after-ages, are sources of consolation of which every ingenuous mind must fully feel the value. How melancholy was the reflection utterred on deathbed, by one of the ablest lawyers and judges of the last age, but whose mental stores were wholly limited to the ideas connected with his profession, "My life has been a chaos of "nothing!"

The man to whom these memoirs relate, was in every period of his progress secure against the miserable feeling of such a retrospect. Independently of the discharge of his professional duties, and the most active concern which he took in numberless schemes for the public good, and the improvement of his country, his various writings bear evi-

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dence of a mind perpetually employed, and which seems to have known no other relaxation than a change of labour *.

Mr Home's attention turned to Metaphysics.

Before his being called to the bar, Mr Home's attention seems to have been considerably turned to metaphysical investigation; and for that study, to which his intellectual powers were peculiarly adapted, he entertained, through the whole course of his life, a strong predilection. It is not necessary here to enter deeply into the question, in what degree of importance such researches truly stand in the scale of human pursuits. Allowing them to be conversant about the noblest part of our frame, the nature and powers of the human soul; and granting that they give the most vigorous exercise to the understanding, by training the mind to an earnest and patient attention to its own operations; still, I fear, it must be admitted, that, as those abstract studies are beyond the limits of the faculties of the bulk of mankind, no conclusion thence derived can have much influence upon human con-

* Πόνε μεταξὺ εἶδος ἐστιν ἀναπαύσεως.

duct*. Even the anxiety shewn by meta- CHAP. I.
physical writers to apologize for their fa-

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* The following passage, containing an estimate of the comparative importance and utility of the metaphysical mode of inquiry, when contrasted with the more ordinary manner of treating the study of human nature, is well deserving of attention, as proceeding from the pen of one of the ablest of the metaphysical writers, and who therefore cannot be supposed to have underrated the value of his favourite species of research. "Moral philosophy," (says Mr Hume), "or the "science of human nature, may be treated after two different "manners; each of which has its peculiar merit, and may "contribute to the entertainment, instruction and reformation of mankind. The one considers man chiefly as born "for action; and as influenced, in his measures, by taste and "sentiment; pursuing one object and avoiding another, according to the value which these objects seem to possess, "and according to the light in which they present themselves. As virtue, of all objects, is allowed to be the most "valuable, this species of philosophers paint her in the most "amiable colours; borrowing all helps from poetry and eloquence, and treating their subject in an easy and obvious "manner, and such as is best fitted to please the imagination and engage the affections. They select the most striking observations and instances from common life; place opposite characters in a proper contrast; and, alluring us into "the paths of virtue, by the views of glory and happiness, "direct our steps in these paths by the soundest precepts and "most illustrious examples. They make us *feel* the difference between vice and virtue; they excite and regulate our "sentiments; and so they can but bend our hearts to the "love of probity and true honour, they think that they

BOOK I. vourite pursuits, by endeavouring, with great ingenuity, to deduce from them a few prac-

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" have fully attained the end of all their labours. The other " species of philosophers consider man in the light of a rea- " sonable, rather than an active being, and endeavour to form " his understanding more than cultivate his manners. They " regard human nature as a subject of speculation; and, with " a narrow scrutiny, examine it, in order to find those prin- " ciples, which regulate our understanding, excite our senti- " ments, and make us approve or blame any particular ob- " ject, action or behaviour. They think it a reproach to all " literature, that philosophy should not yet have fixed beyond " controversy, the foundation of morals, reasoning, and cri- " ticism; and should for ever talk of truth and falsehood, " vice and virtue, beauty and deformity, without being able " to determine the source of these distinctions. While they " attempt this arduous task, they are deterred by no difficul- " ties; but, proceeding from particular instances to general " principles, they still push on their inquiries to principles " more general; and rest not satisfied, till they arrive at those " original principles, by which in every science all curiosity " must be bounded. Though their speculations seem ab- " stract, and even unintelligible to common readers, they " aim at the approbation of the learned and the wise; and " think themselves sufficiently compensated for the labour of " their whole lives, if they can discover some hidden truths, " which may contribute to the instruction of posterity. It is " certain that the easy and obvious philosophy will always, " with the generality of mankind, have the preference above " the accurate and abstruse; and by many will be recom- " mended, not only as more agreeable, but more useful than

tical consequences with respect to life and manners, is strong proof of the native infertility of the soil, on which so much labour is bestowed to produce so small a return. It is not much to the praise of this science, that the most subtle and ingenious spirits have, for above two thousand years, assiduously exercised themselves in its various subjects of discussion, and have not yet arrived at a set of fundamental principles on which

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" the other. It enters more into common life; moulds the " heart and affections; and, by touching those principles " which actuate men, reforms their conduct, and brings them " nearer to that model of perfection which it describes. On " the contrary, the abstruse philosophy, being founded on a " turn of mind which cannot enter into business and action, " vanishes when the philosopher leaves the shade and comes " into open day; nor can its principles easily retain any in- " fluence over our conduct and behaviour. The feelings of " our heart, the agitation of our passions, the vehemence of " our affections, dissipate all its conclusions, and reduce the " profound philosopher to a mere plebeian. This also must be " confessed, that the most durable, as well as the justest re- " putation, has been acquired by the easy philosophy; and " that abstract reasoners seem hitherto to have enjoyed only " a momentary reputation from the caprice or ignorance of " their own age, but have not been able to support their re- " nown with more equitable posterity," &c.; D. HUME's *Inquiry concerning the Human Understanding*, sect. 1.

the thinking world is agreed *. Neither have the uses to which this sort of reason-

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* "The number of ingenious theorists," (says an acute metaphysician), "has in every age been great; that of sound "philosophers has been wonderfully small, or rather, they are "only *beginning now to have a glimpse of their way*, in consequence of the combined lights furnished by their predecessors.—The last observation holds more strictly with respect to the philosophy of the human mind, than any other "branch of science; for there is no subject whatever on which "it is so easy to form theories calculated to impose on the "multitude; and none, where the discovery of truth is attended with so many difficulties." *Account of the Life and Writings of Thomas Reid, D. D. by* Mr DUGALD STEWART, p. 83.—But happily for man there is no truth which is of serious importance to him, that falls under this description. *Quicquid nos vel meliores, vel beatiores facturum est, aut in aperto, aut in proximo posuit Natura.* There is much sound sense in the following observations of a writer well entitled, from the singular variety of his own talents, to estimate the comparative value of scientific and intellectual researches: "Les notions sur lesquelles les hommes different si prodigieusement ne sont point nécessaires aux hommes: il est "même impossible qu'elles nous soient nécessaires, par cette "seule raison qu'elles nous sont cachées. Il a été indispensable que tous les pères et mères aimassent leurs enfans; "ainsi les aiment-ils. Il étoit nécessaire qu'il y eut quelques "principes généraux de morale, pour que la société pût subsister: aussi ces principes sont-ils les mêmes chez toutes les "nations policées. Tout ce qui est un eternel sujet de dispute, est d'une inutilité éternelle."—*Lettre de* VOLTAIRE *à Madame la* MARQUISE DU DEFFANT.

ing has sometimes been applied, tended to enhance its estimation. The attempts that have been made to found morality on metaphysical principles, have, for certain, been prejudicial on the whole, to the cause of virtue. The acutest of the sceptical writers, availing themselves of Mr Locke's doctrine of the origin of ideas, and the consequences he has thence drawn respecting morals, have done much more harm, by weakening our belief in the reality of moral distinctions, than the ablest of their opponents, combating them on the same ground, and with the same weapons, have found it possible to repair. The baneful industry of the former has, it is true, made the labours of the latter, in some degree necessary, and therefore useful: and it is in this point of view, that the writings of those metaphysicians, who are antagonists of the sceptical philosophy, are entitled to attention and to praise. Among these we may justly rank the subject of these memoirs.

His correspondence with Baxter.

It appears from several letters yet remaining, dated in May, June, and July 1723, between Mr Home and Mr Andrew Baxter,

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the learned and acute author of *An Inquiry into the nature of the Human Soul*, and of *Matho, sive Cosmotheoria puerilis*, that the former was at that time earnestly engaged both in physical and metaphysical disquisitions. Mr Baxter, who was then employed in superintending the education of a son of Mr Hay of Drumelzier*, lived at Dunse

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* Mr Baxter was in his manners very much a man of the world, and of such pleasing conversation, as to be extremely attractive to the young men of his acquaintance. He had travelled with Lord Blantyre, Lord Gray, and Mr Hay of Drumelzier; and Dr Carlyle found him at Leyden in 1745, where his friendship was much cultivated by the English students at that college; and among the rest by the celebrated John Wilkes, who became so great a favourite on account of his sprightly talents and engaging address, that the philosopher dedicated to him one of his publications. This circumstance is mentioned by the author of Baxter's Life, in the *Biographia Britannica*, as honourable to Baxter; considering the antipathy that Wilkes bore to his countrymen the Scotch; but Wilkes's antipathy was of a later growth; for Baxter died in 1750, and Wilkes had displayed no enmity to the Scotch, till Lord Bute's administration called it forth in 1763. (Dr Carlyle's MS Memoirs of his own Life).

Mr Baxter has left the strongest testimony he could give of his attachment to Mr Wilkes, in a remarkable letter which he wrote upon his deathbed to that gentleman:—a letter, which, while it exhibits the picture of the worthiest mind, affords a striking proof of the practical influence of philosophy, when

Castle, within a few miles of Kames, Mr Home's paternal residence; and thus an intimacy had naturally taken place between two men of talents, attached to the same species of pursuits. Mr Baxter was probably at that time occupied in those inquiries on which he has founded the principal doctrines of the Treatise above mentioned; a work which Dr Warburton has characterized, in his *Divine Legation of Moses demonstrated*, as "containing the justest and most

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pursued, not from the vain and frivolous aim of striking out new or singular opinions, but cultivated for its best and noblest purpose, the fixing on a sure basis our conviction of the power, wisdom and beneficence of the Deity. As this valuable remnant of Mr Baxter is little known, and cannot be perused without advantage, I have inserted it in the Appendix to this Volume. (see Appendix, NO. II. Art. iii.). I would request the ingenuous reader to remark the opening sentence of the last paragraph of this letter; and to contrast the wish which is there expressed in a strain of humble submission to the Divine will, with a similar wish of another great philosopher, in the like circumstances:—I mean the sentiment expressed by Mr Hume, in his feigned dialogue with Charon, in the prospect of his own speedy dissolution. Both philosophers assign a motive of benevolence as prompting their desire for a longer measure of life. Which of them had the better title to urge that plea, the impartial reader will determine.

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"precise notions of God and of the soul, "and as altogether one of the most finished "of its kind;", but which, though evincing great metaphysical acuteness, certainly did not deserve this unqualified encomium *.

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* The object of Mr Baxter's Treatise, is to prove the immateriality, and consequently the immortality of the soul, from the acknowledged principle of the *vis inertiæ* of matter. His argument is as follows: There is a resistance to any change of its present state, either of rest or motion, essential to matter, which is inconsistent with its possessing any active power. Those, therefore, which have been called the natural powers of matter, as gravity, attraction, elasticity, repulsion, are not powers implanted in matter, or possible to be made inherent in it, but are impulses or forces impressed upon it *ab extra*. The consequence of the want of active power in matter is, that all those effects, commonly ascribed to its active powers, must be produced upon it by an immaterial being. Hence we discover the necessity for the agency of a constant and universal Providence in the material world, who is God; and hence we must admit the necessity of an immaterial mover in all spontaneous motions, which is the *Soul*; for that which can arbitrarily effect a change in the present state of matter, cannot be Matter itself, which resists all change of its present state and since this change is effected by willing, that thing which wills in us is not matter, but an immaterial substance. From these fundamental propositions, the author deduces, as consequences, the necessary immortality of the soul, as being a simple uncompounded substance, and thence incapable of decay; and its capacity of existing, and being

The correspondence between Mr Home and Mr Baxter took its rise from some doubts

conscious when separated from the body.—This argument, which excludes the operation of second causes in nature, and resolves all into the immediate agency of the First Cause, has been justly censured by the best philosophers. It is chiefly in allusion to this notion of Baxter's, inculcated in his *Inquiry into the Soul*, and in his *Cosmotheoria puerilis*, that MACLAURIN thus admirably expresses himself, in his *Account of Sir Isaac Newton's Philosophy*:—"As we cannot but conceive "the universe as depending on the *First Cause* and Chief "Mover, whom it would be absurd, not to say impious, to "exclude from acting in it; so we have some hints of the "manner in which he operates in nature, from the laws which "we find established in it. Though he is the source of all "efficacy, yet we find that place is left for *Second Causes*, to "act in subordination to him; and mechanism has its share "in carrying on the great scheme of nature. The establish-"ing the equality of action and re-action, even in those "powers which seem to surpass mechanism, and to be more "immediately derived from him, seems to be an indication "that those powers are, however, in a certain degree, circum-"scribed, and regulated in their operations by mechanical "principles; and that they are not to be considered as mere "volitions of his, (as they are often represented), but rather "as instruments made by him, to perform the purposes for "which he intended them.—They who hastily resolve those "powers into immediate volitions of the Supreme Cause, "without admitting any intermediate instruments, put an end "to our inquiries at once, and deprive us of what is probably "the most sublime part of philosophy, by representing it as

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which had occurred to the former, on considering the account given by Dr Keill, in his *Introduction to Physics*, of the communication of motion. Mr Home conceived that this philosopher had laid down as a principle, what could not be granted him; namely, that motion once communicated to matter, would always continue, till a new cause occurred which induced an alteration; whereas, according to Mr Home's idea, motion is not one single effect, but a continued succession of effects, each requiring a new cause, or a successive repetition of the cause to produce it: As, supposing a body impelled by the touch of the hand to move forward one inch, the motion ceases when the hand is removed, and it requires the hand to be again applied, to move it forward another inch. This sort of reasoning is a proof that Mr Home was at that time a mere no-

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" imaginary and fictitious; by which means, they hurt those " very interests which they appear so sanguine to promote; " for the higher we rise in the scale of nature towards the " Supreme Cause, the views we have from philosophy appear " more beautiful and extensive." *Account of Sir Isaac Newton's Phil. Discov.* B. iv. c. 9. § 14.

vice in physics; a science in which, it must be allowed, he never attained to any great proficiency. Mr Baxter endeavoured at first, with much patience and good temper, to point out to him the error of his argument; but, teased at length with what he conceived to be sophistry, purposely employed by his antagonist, to shew his ingenuity in throwing doubt on principles to which he himself annexed the greatest importance, and on which he had founded what he believed a demonstration of those doctrines, most material to the happiness of mankind, he broke off the correspondence: "I shall return you" (says he) "all your "letters: mine, if not already destroyed, "you may likewise return. We shall burn "them and our philosophical heats to-"gether."

—with Samuel Clarke.

In the same year 1723, Mr Home seems to have been desirous of entering the lists of metaphysical controversy with Dr SAMUEL CLARKE; having written a very long letter to that eminent author, in which he criticises and impugns several of the arguments

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contained in his *Discourse concerning the Being and Attributes of God.* This attack from "a young philosopher, and a stranger," as Mr Home terms himself, was neither arrogantly contemned, nor indignantly repelled by the venerable divine. He answered the objections of his correspondent briefly, but pointedly, and with the most perfect good temper; yet in such a strain, as to prompt to no further continuance of the controversy. (See Mr Home's letter, and Dr Clarke's answer, in the Appendix, NO. II.) The objections urged by Mr Home were afterwards more fully stated in his *Essays on the Principles of Morality and Natural Religion.* However inconclusive they may appear when fairly canvassed, they serve as strong evidence of the inexpediency of resting the demonstration of so important a proposition as the existence of the Deity, and the proof of his moral attributes, on the *argumenta à priori*: for, independently of the unfitness of those arguments, from their abstruseness and intricacy, to affect the understanding of the generality of mankind, their extreme subtilty will ever render them the subject of dispute

and cavil, and therefore the most favourite objects of attack with the sceptical writers*. Among the latter, it will be seen, from what I have already said, that I am very far from classing Mr Home; although, by the undis-

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* An anecdote told by Mr Whiston, shews, that Dr Clarke himself was sensible of this strong objection to his mode of reasoning, and sought rather to apologize for it than to obviate the objection. "When Clarke brought me his "book" (says Whiston,) "I was in my garden against St "Peter's College, Cambridge, where I then lived. Now, I "perceived that in these sermons he had dealt a great deal in "abstract and metaphysical reasoning, I therefore asked him, "how he ventured into such subleties, which I never durst "meddle with; and shewing him a nettle, or some contemp-"tible weed in my garden, I told him that weed contained "better arguments for the being and attributes of a God "than all his metaphysics. Clarke confessed it to be so; "but alleged for himself, that since such philosophers as "Hobbes and Spinoza had made use of those kind of suble-"ties *against*, he though it proper to shew, that the like way "of reasoning might be made better use of *on the side of* "religion; which reason or excuse I allowed to be not incon-"siderable." WHISTON's *Historical Memoirs.*—The respectable author of the *Life of Dr Francis Hutchison*, (Dr Leechman,) has made some very just observations on the dangerous consequences of attempting a strict demonstration in subjects which, from their nature, are incapable of that proof. See *Preface to Hutcheson's System of Moral Philosophy*, vol. 1. p. 5.

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cerning multitude, he has been frequently ranked in that number. That on some points of Theology he entertained opinions different from the particular tenets of the Established Church, is indeed evident from his writings: But the truth is, he was much more of a dogmatist than a sceptic: his mind could never rest in doubt; and he had formed to himself a positive creed, not only in all matters of Theology, Philosophy and Science, but even of Taste. He possessed that ardour in search of truth, which never stops in its pursuit, till it believes the object attained. Hence all his researches terminate in what the inquirer believed to be a demonstration, or at least a proof so strong, as to afford a rational conviction of the truth of the proposition he desired to establish. It is only the cold and phlegmatic temperament that can rest satisfied under a suspension of belief on those topics, on which the man of a warm imagination and strong affections feels it a misery to be unresolved. Such as have accused Mr Home of scepticism, are either ignorant of his writings, or have forgotten a most material distinction. It ought ever to be remembered, that there

is a wide difference between those who labour to invalidate the fundamental principles of religion and morality, and to inculcate the wisdom of universal doubt and indecision; and those who, firmly convinced of the reality and truth of such fundamental principles, are dissatisfied with the particular arguments that have been used to demonstrate them, and are anxiously desirous to found them on a basis, which, to their apprehension, should be proof against all attempts to shake or undermine them. As I am most thoroughly convinced, that the eminent person who is the subject of these Memoirs, falls under the latter of these descriptions, as will be evident to all who impartially consider the scope and tenor of his philosophical writings, (and is more particularly known to myself, who had much opportunity of being acquainted with his free and sincere opinions,) I cannot too earnestly request, that, in forming a judgment of those writings, the candid reader will constantly keep in view this important distinction.

CHAPTER II.

State of the Scottish Bench in 1723.—President Dalrymple.—Lauder of Fountainhall.—Pringle of Newhall.—State of the Bar in 1723-4.—Forbes of Culloden.—Dundas of Arniston.—Dalrymple of Drummore.—Ferguson of Kilkerran.—Areskine of Tinwald.—Grant of Elchies.—Grant of Prestongrange.—Craigie of Glendoick.—Mr Home's first work on the Law.—His manner of pleading.—His Essays on subjects of Law.—Jus Tertii.—Beneficium cedendarum actionum.—Vinco vincentem.—*Prescription.*

State of the Scottish Bench in 1723. President Dalrymple.

MR HOME was called to the Bar in January 1723-4. Sir HEW DALRYMPLE of North-Berwick was then President of the Court of Session; and among the most eminent of its Judges at that time were the Lords Fountainhall and Newhall. The President, if he inherited not the distinguished talents of his father the Viscount of Stair, and his elder brother, the Secretary, was free from

that turbulent ambition and crafty policy which marked the characters of both; [illegible] with sufficient knowledge of the laws, [illegible] a man of unimpeached integrity, and of great private worth and amiable manners.

Sir John Lauder of Fountainhall was a profound lawyer, and a man of considerable learning and knowledge of human nature, having read much, and studied the characters of mankind. As a Judge, he applied himself with indefatigable assiduity to the discharge of his official duties; and has left a very honourable memorial of his talents and industry in his *Collection of Decisions*, which record the proceedings of the Court of Session from 1678 to 1712; and incidentally note the transactions of the Privy Council of Scotland, with those of the Courts of Justiciary and Exchequer: a work compiled with so pleasing a mixture of the anecdotes of the times, and so much characteristic ingenuity of observation, as to render its perusal agreeable even to the general reader, and valuable to the historian, independently of its utility to the professional lawyer.

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Pringle of Newhall.

Sir WALTER PRINGLE of Newhall shone with conspicuous lustre in all the most essential qualities of a Lawyer and of a Judge. His great knowledge of jurisprudence and distinguished eloquence, rendered him for many years a principal ornament of the Bar; and his high sense of honour, immaculate probity, and dignified deportment as a Judge, accompanied at the same time with the most engaging modesty and diffidence in his own opinions, while they enhanced in the public mind the respect and authority of the Court of which he was a member, have given him a permanent name in the annals of Scottish jurisprudence *.

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* Sir Walter Pringle of Newhall was admitted Advocate in 1687; and after thirty-one years practice at the Bar, was raised to the Bench in 1718. He died in 1736; and a tribute of honour was conferred on him by his brethren which had never before been paid to any of the ordinary Judges of the Court; his funeral was attended by the Lords of Session in their robes of office. The Faculty of Advocates, upon that occasion, engrossed in their records a testimonial of their respect for the memory of Lord Newhall, (penned by their Dean, afterwards Lord Armiston, and President of the Court,) in which the following passage is worthy of notice: "His fi-
"lity, candour, and careful discharge of the duties of his for-
"mer employment, added to his moral character, had cele-

The Bar, at the same time, afforded a very great display, and exhibited an uncommon variety of professional abilities. I shall mention a few of the most distinguished Advocates who then divided the practice of the Courts, and who rose by their merits to the highest honours of the law.

DUNCAN FORBES of Culloden was in all respects one of the most eminent men of his

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"brated his name: he was marked out by the unanimous
"suffrage and voice of the subjects, as a person whose know-
"ledge and integrity would render their lives and properties
"secure in his hands; and, as such, was nominated by their
"gracious Sovereign to execute so high a trust. The Fa-
"culty do acknowledge, with gratitude and honour to his
"memory, that his after-conduct gave no disappointment to
"so great expectations. His integrity proved a shining or-
"nament to his learning and knowledge; and these, with his
"other distinguishing qualities of steadiness and unbiassed
"resolution, enabled him to apply his principle of integrity
"to useful practice, and to do justice, not by accident, but
"because he knew it to be so: And if at any time human
"frailty, and an over-jealousy of himself, led him into small-
"[illegible] yet the virtuous principles from which he act-
"[illegible] those cases, and the extensive habit of justice
"[illegible]ired, overshadowed these lesser failings, and
"[illegible]ming lustre to the whole course of his judg-

BOOK I. time. His learning was extensive and profound, reaching even to the oriental languages; and he had that acuteness and subtilty of parts, which is peculiarly fitted for the nice discriminations of the law; but which was always regulated in him by the controlling principles of his nature, probity, candour, and a strong sense of the beauty of virtue and moral excellence. His warmth of heart made him a man of religion; and as all his feelings were ardent, his piety, of course, was fervent and habitual. His small tract, intitled *Reflections on the Sources of Incredulity*, if some allowance be made for a few peculiar notions, the result of a warm and exalted imagination, is a book which no man of an ingenuous mind can read without feeling his heart improved, and a strong impression made, favourable to religion and virtue *. The turn of mind to which I have

* "I cannot, (says Dr Warburton, in a letter to Dr "Hurd,) omit recommending to you, the late Lord President "Forbes's little posthumous work on *Incredulity*. It is a lit- "tle jewel. I knew and venerated the man; one of the "greatest that ever Scotland bred, both as a Judge, a Patriot, "and a Christian." *Warburton's Letters*, p. 40.——It were

-luded, led him to become an admirer and disciple of the Hutchinsonian scheme of Theology, which professes to find in the Holy Scriptures, when interpreted according to the radical import of the Hebrew expressions, a complete system of natural philosophy, as well as of religious instruction. He had not enough of physical science to detect the absurdities with which the [illegible] of his favourite author abounds; but it delighted his imagination, and coincided with his religious propensities; and in the writings which he published in support of that scheme, (his *Letter to a Bishop*, and his *Thoughts concerning Religion, Natural and Revealed*), he is allowed to be the ablest of all the expositors of the Hutchinsonian Theology.—In the eloquence of the Bar, Forbes outshone all his cotemporaries; for he united to great knowledge of jurisprudence, a quickness of comprehension that discovered to him at once the strong ground

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[illegible], that in any future edition of this valuable tract, [illegible] were paid to the correction of the style in a few passages, which blemish the general excellence of the composi-

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of argument which he was to press, or the weakness of the doctrine he wished to assail. When raised to the Presidency of the Court, the vigour of his intellect, his patience in the hearing of causes, his promptitude in the dispatch of business, the dignity of his deportment, and above all, the known probity and integrity of his mind, gave the highest weight to the decisions of that tribunal over which he presided. When to these qualifications we add an extensive acquaintance with human nature, acquired and improved in a most active public life, and uniformly directed to the great ends of promoting the welfare and prosperity of his fellow-citizens, and discharging his duty to God and to his country, we shall have some faint idea of the character of Duncan Forbes*.

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* It is well known, that the firm, but temperate conduct of the President Forbes, his extensive influence with his countrymen, and his patriotic exertions, even to the sacrifice of his private fortune, were the main instruments of the suppression of the Rebellion in Scotland in 1745–6; and that had his enlightened counsels been attended to, and his provident precautions adopted, the seeds of rebellion had in all probability never sprung to light, and the country had been spared the

ROBERT DUNDAS of Arniston, whose father and grandfather had successively discharged the duty of Judge in the Court of Session, and who afterwards rose by his merits to the Presidency of the Court, (an office which his son, of the same name, was destined to fill with still increasing reputation), was at this time in the height of his practice as a barrister. He had great natural abilities, and a ready and animated elocution, which fitted him to excel in extemporaneous pleading, and particularly in reply. A fine specimen of his argumentative powers was given on the remarkable trial of Carnegie of Finhaven, indicted for *murder*, but guilty only of *homicide* or *manslaughter*, in having unintentionally killed the Earl of Strathmore*. In that memorable trial, Dun-

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misery which it actually endured. It is needless, and perhaps might be invidious, to enter into the reasons why the eminent services of this great and good man, were treated on the part of Government with a neglect, ingratitude, and injustice, which leave a stain upon the annals of the times.

* James Carnegie of Finhaven was tried before the Court of Justiciary, for the murder of Charles, Earl of Strathmore,

BOOK I. das had the merit not only of saving the life of the prisoner, but of establishing a point of the utmost consequence to the security of life and liberty, the power of a jury, at that time questioned in Scotland, of returning a *general verdict*, on the guilt or innocence of the person accused *. The elder Arniston, with great quickness of parts, inherited neither the ample stores of various knowledge, nor the enlarged and philosophic mind of his predecessor Forbes; but he possessed a sound and discriminating judgment; and the manner in which he filled the high offices of the law in times of much difficulty, from the prevalence of party-

in 1728. At a meeting in the country, where the company had drunk to intoxication, Carnegie having received the most abusive language, and sustained a personal outrage of the grossest nature from Lyon of Bridgeton, drew his sword, and staggering forward to make a pass at Lyon, killed the Earl of Strathmore, a person for whom he had the highest regard and esteem, and who unfortunately came between him and his antagonist, apparently with the view of separating them.

* See a Biographical Account of the younger President Arniston in *Transactions of the Royal Society of Edinburgh*, vol. ii.

spirit, reflects great honour on his moderation and humanity.

Dalrymple of Drummore.

HEW DALRYMPLE of Drummore, son of the President North-Berwick, and grandson of the Viscount Stair, inherited the talents and genius of his forefathers. He was an acute and sound lawyer; and possessed a ready, distinct and forcible, though not a polished elocution. He had a great command of wit and humour, which equally enlivened his conversation, and gave interest and spirit to his public harangues; but these qualities were tempered with such sweetness of disposition, that he never employed them to wound or to mortify his antagonist. The great urbanity of his manners, and a keen relish of social enjoyments, endeared him to his friends; and his eminent worth and probity, together with a high feeling of honour, and a noble and ingenuous boldness of countenance and deportment, gave uncommon force and authority to all his arguments and opinions *.

* "Lord Drummore," (says Dr Carlyle, who knew him intimately,) "was a man most popular and agreeable in his

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Fergusson of Kilkerran.

Sir JAMES FERGUSSON of Kilkerran, was undoubtedly one of the ablest lawyers of his time. His knowledge was founded on a thorough acquaintance with the Roman jurisprudence, imbibed from the best commentators on the Pandects, and with the recondite learning of Craig, who has laid open the fountains of the Scottish law, in all that regards the system of Feudalism. Of his manner as a barrister, we have no other record than the printed papers of his composition, which evince a skilful arrangement of his matter, a judicious selection of his ground of argument, and a nervous brevity of expression, which admits of no rhetorical embellishments. The probity and integrity of his moral character, entitled him to respect and veneration. The decisions which he has recorded during the period when he

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" manners, and an universal favourite. He was a great " friend of the poor, not merely by giving alms, in which he " was not slack, but in a better way, by encouraging agricul- " ture and manufactures, and every kind of industry, and by " devoting much of his spare time to his duty as Justice of " the Peace in the parishes where his estate lay; in compo- " sing differences, and regulating the police of the country." *MS. Memoirs of the Reverend Dr Alexander Carlyle.*

sat as a Judge of the Supreme Court, exhibit the clearest comprehension, and the soundest views of jurisprudence, and will for ever serve as a model for the most useful form of Law Reports.

Areskine of Tinwald.

CHARLES ARESKINE of Tinwald, a younger son of an ancient and honourable family *, had probably been educated with a view to the Church. In 1700, when only twenty years of age, he presented himself a candidate, and, on a comparative trial with several competitors, gained his election to the office of one of the four Regents, or Philosophy Professors in the University of Edinburgh; whose function it then was, to conduct their pupils through a quadriennial course of study, comprehending the sciences of Logic, Ethics, Metaphysics, and Natural Philosophy, to the highest academical degrees; an office, therefore, requiring great ability, and a very general acquaintance with

* He was grandson of Sir Charles Areskine of Alva, a younger son of John, 7th Earl of Mar, by Mary Stewart, daughter of Esme, Duke of Lennox.

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science and literature. The reputation he gained as a public speaker, was probably his inducement to turn his views to the profession of the law. He entered Advocate in 1704; and a few years afterwards, being appointed Professor of Public Law, which released him from the more strict and regular duties of his former office, he spent some years in foreign travel; and, on his return to Scotland, applied himself with great diligence to practice as a barrister. He rose to high employment: He was appointed Solicitor-General in 1725; and in 1737, through the favour of Archibald, Duke of Argyle, then minister for Scotland, he obtained the office of King's Advocate: In 1744, he was promoted to a seat on the Bench, by the title of Lord Tinwald; and, a few years afterwards, to the office of Justice-Clerk, or President of the Court of Justiciary *. In all these departments, he discharged his

* The Lord Justice-General is, strictly speaking, the President of the High Court of Justiciary; but, as of late years it has not been customary for that officer to sit in judgment, the actual function of President of the Court is exercised by the Lord Justice-Clerk.

duty with honour and integrity. As a lawyer, he was esteemed an able civilian: he spoke with ease and gracefulness, and in a dialect which was purer than that of most of his cotemporaries: As a Judge, his demeanour was grave and decorous, and accompanied with a gentleness and suavity of manners that were extremely ingratiating.

Grant of Elchies.

PATRICK GRANT of Elchies, owed his most extensive practice as a barrister to the pure force of his natural abilities. He had a head peculiarly fitted for the investigation of the most intricate points of the law, which his genius developed as by a species of intuition; reducing every question to some great and leading principle, and thence either shewing its derivation as a necessary corollary, or accounting for its departure from the general axiom upon some obvious ground of exception. It was from him that Mr Home, (as I have heard him frequently acknowledge), learned that habit of logical investigation, which he found of the utmost advantage in the daily practice of his profession as a barrister, and which he carried

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into all his researches on the subject of law as a science. Assuming it as a fixed position, that every case is governed by some general principle, (unless it be taken out of the rule by its special circumstances), the only matter of exercise to the mind is the discovery of that principle. When once that is attained, every argument ranges itself in order, as a regular corollary from the proposition, and every objection admits of an easy solution. In this habit lay the chief talent of Elchies; and, conscious of the great advantage which this subjection of all his stores of the law to a few great and ruling principles, gave him over his less scientific competitors, his manner as a barrister was too warm and overbearing to his opponents; a defect which tarnished his great abilities, and attending him even on the Bench, impaired his dignity as a Judge; yet, in that character, his perfect probity, and sincere regard for justice, were confessed by all.

Grant of Preston-grange.

Of a character very different in respect of temper, and of abilities, if not so profoundly scientific, yet more various, and more ex-

tensively useful, was his namesake, and successor on the Bench, WILLIAM GRANT of Prestongrange. There was in him a rectitude of moral feeling, and a principle of virtuous integrity, which regulated the whole of his conduct; and these, accompanied with a candour of judgment, a liberality of sentiment, and a winning gentleness of manners, which were the pure offspring of a warm and benevolent heart. These qualities shone conspicuously in his discharge of the office of King's Advocate, which he held for six years, soon after the Rebellion 1745–6. In that situation, his conduct, in the adjustment of the claims on the forfeited estates, merited universal approbation. It was regulated by a principle of equity, tempering the strictness of the law; and indicated a mind superior to all the illiberal prejudices that are the offspring of party-spirit. In the prosecution of criminals, if at any time he allowed his passions to influence his conduct, it was ever on the side of mercy and humanity. His eloquence was clear, correct, and copious, and seemed to be the result of his natural feelings, and the fruit of his own persuasion of what was just and

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right. The promotion of this excellent man to a seat in both the Supreme Courts was attended with the universal approbation of the public; for his talents equally commanded the respect, and his virtues the esteem of his fellow-citizens *.

Craigie of Glendoick.

Mr Robert Craigie of Glendoick, united to a very profound knowledge of the laws, and an understanding peculiarly turned to the unfolding of the systematic intricacies of the feudal doctrines, the most persevering industry and intense application to business; which introducing him to notice in some

* Lord Prestongrange was a man of general reading, and a correct and able writer. He was author of one of the best political pamphlets that appeared on occasion of the Rebellion 1745-6. It is entitled, *The Occasional Writer: being an Answer to the Second Manifesto of the Pretender's eldest Son: containing Reflections, Political and Historical, upon the last Revolution and the Progress of the present Rebellion in Scotland.* London 1746. The arguments contained in this pamphlet are dictated by good sense and sound political wisdom; and are urged in a strain of such temperance and moderation, as to conciliate the favour even of those whose party prejudices were most strongly in opposition to the doctrines it inculcates.

remarkable causes where those talents were peculiarly requisite, were the foundation of a very extensive practice at the Bar. His rise to eminence, however, was slow, as he had none of the exterior accomplishments that attract attention; and though an acute and able reasoner, his manner of pleading was dry, prolix, and deficient both in grace and energy. In the earlier part of his life, he had, for several years, given private lectures in his chambers to students of the law, before he had any considerable employment as a barrister; but his industry, and the gradually prevailing opinion of his deep acquaintance with jurisprudence, overcame at length every obstacle; and he rose to the first rank among the counsel who were his cotemporaries. He was appointed King's Advocate in 1742, and was promoted to the Presidency of the Court in 1754, on the death of the elder Lord Arniston *.

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* On the subject of the characters of these eminent men, the Judges and the Lawyers of the last age, besides the information derived from my Father, who was the cotemporary of the greater part of them, I am particularly indebted to

From the preceding enumeration, it may fairly be supposed, that the state of the Bar was at this time extremely favourable to the excitement of that emulation which is a principal source of excellence in every profession: but, on the other hand, it was a natural consequence, that the circumstance of so many men of eminent talents engrossing the practice of the courts, should render the progress of a novice extremely slow, however great his abilities, his industry, or his ambition. In the first years of Mr Home's attendance at the bar, he found abundant leisure to store his mind with miscellaneous learning, as well as to increase his knowledge of the law. His first appearances may have given evidence of his

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my very learned friend JOHN RAMSAY, Esq. of Ochtertyre; a gentleman who, in the course of many years spent in philosophic retirement, has found a pleasing exercise for his talents, and knowledge of mankind, and has most usefully employed his leisure, in recording the characters, manners and habits of the preceding times, and the progress of improvement in Scotland. To his ample stores of information, most freely and liberally communicated, I owe the greatest obligation in various departments of this work.

talents as an ingenious reasoner*; but as he never possessed those shining powers of oratory which have frequently raised into notice, and brought at once into high employment, young men who were much his inferiors in solid abilities, it was not till after the publication of his first work on the law, that we find him enjoying even a moderate share of practice as a barrister. He published, in 1728, a folio volume of the *Remarkable Decisions of the Court of Session*, from 1716 down to that period. His merits had gained him the patronage of the President; and in the Preface to this work, he mentions with becoming expressions of his gratitude, that he owed to that Judge not only the first hint of the undertaking,

Mr Home's first work on the law.

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* The first cause, (said Lord Kames,) which brought me into notice, was an intricate competition among the creditors of a bankrupt, (ranking of Tofts); in which I wrote a paper which gained me much reputation. Lord Minto, one of the Judges, came down from the Bench, and taking me by the hand, said, "Mr Home, I am glad to see your "name at this paper. You have done like an able mathe- "matician; thrown out all the *useless quantities*, and given "us only the *equations*." I felt warmly this high praise. *Mr Boswell's MSS.*

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but a continued encouragement and aid in the prosecution of it.

These reports, which are executed with great judgment, and contain a very faithful statement of each cause on its proper merits, rejecting all the rubbish and chaff which usually load the arguments of the counsel, brought the author deservedly a very considerable share of reputation. He began to be regarded as a young man of talents, who had his profession at heart, and who would spare no pains to acquit himself with honour in the most intricate causes in which he might be employed.

His manner of pleading.

Mr Home's manner as a barrister was peculiar to himself. He never attempted to speak to the passions, or to captivate his hearers by the graces of oratory; but addressing himself to the judgment, and employing a strain of language only a little elevated above that of ordinary discourse, which, even by its familiar tone and style, fixed the attention of the Judge, while it awakened no suspicion of rhetorical artifice, he began by a very short and distinct state-

ment of the facts of the cause, and a plain enunciation of the question of law thence arising. Having thus joined issue with his adversary on what he conceived to be the fair merits of the case, he proceeded to develope the principle on which he apprehended the decision ought to rest, and endeavoured, with all the acuteness of which he was master, to shew its application to the question in discussion. He knew that if the principle were once conceded, and its application demonstrated, the cause was gained; the arguments of his opponent needed no deliberate examination, for they fell of necessity to the ground. It was therefore, in general, much more an object with him to rear his own structure of argument upon a solid basis, than to cavil with or impugn the reasoning of his antagonist: the one task almost always superseded the other; and the scornful neglect with which the latter was treated, (where, in truth, no formal refutation was necessary), served to precipitate its downfal. It must be owned, however, that such a mode of argument and pleading is not adapted to every cause; nor to that part which it is often incumbent on

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the pleader to discharge. It may be, in many cases, as necessary to assail and demolish a structure of argument, as to frame and build it up: and it is occasion alone, (as whether the pleader is called upon to open his cause, or to reply), that determines the propriety of the one method or of the other. But the same talents are, in general, alike important to either duty. I should, however, be led to conceive, that Mr Home's ability lay more in the devising of ingenious argument to support his own side of the question, as an opening or leading counsel, than in reply. Though possessing the utmost ingenuity and subtilty of discrimination, and thus most readily descrying the weakness or fallacy of any reasoning, he wanted that command of copious elocution which is necessary for an extemporaneous discussion of a laboured argument. One peculiarity, however, extremely worthy of notice, (we perceive from his law papers), attended his mode of reply; which was the fair concession and abandonment of all the weaker points of his cause. Yielding these at once to his antagonist, and before the concession was demanded, he gained the

manifold advantage of creating the most favourable impression of his own candour, and a persuasion of the strength of his cause; while, with admirable good policy, he frustrated all attack on those weak parts, which would have furnished matter of triumph to his opponent, and prejudiced his more solid ground of support or defence.—A most estimable quality this in a pleader; but rare, as it should seem, in proportion to its value *.

* The following anecdote Mr Boswell had from Lord Kames himself: "Lockhart, who was certainly one of the "ablest barristers of his time, was my antagonist in an ac- "tion of damages for oppression and illegal imprisonment. "He made a most violent speech for the prosecutor, repre- "sented my client as a monster, and with that inflammatory "eloquence of which he was so much a master, made a deep "impression, as I perceived, on the minds of the Judges. I "was no match for him in this kind of rhetoric, but I took a "more effectual ground of defence. I saw that the facts in "evidence gave no support to the charge, to the extent to "which my adversary had pushed it, and that all his philip- "pic was a *brutum fulmen*, which a plain statement of the "evidence would dissipate in a moment. This I gave in a few "sentences, and with great coolness; saying, that I left it "to the Court to make the commentary, and to judge what "foundation my brother had for all his heat and intempe- "rance. I need not tell you that I was completely success- "ful." *Mr Boswell's MSS.*

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But the main excellence of Mr Home as a pleader, lay in the faculty which he possessed, above all his cotemporaries, perhaps above all that had gone before him, of striking out new lights upon the most abstruse and intricate doctrines of the law; of subjecting to a strict scrutiny those rules and maxims, venerable only from inveterate usage, and having no claim to respect on any solid ground of reason: a faculty by which he frequently prevailed, in spite of that prejudice, in general salutary, which leads us to resist all innovations, and, in opposition to a long train of precedents, which often makes the law, to bring about an entire change of opinion, and to establish a new practice, more consonant to rational principles. Of some of those instances of improvement of the law which we owe to his penetrating genius, I shall afterwards have occasion to take notice. At present, I shall only observe, that the uncommon ingenuity which he displayed, and the success which attended his efforts, in overturning, in a few remarkable cases, the opinions hitherto prevalent, and sanctioned by the most weighty of our old writers on the law, gain-

ed him a great accession of reputation, and brought him now, by a rapid progress, to the very first eminence as a practitioner at the bar.

Essays on subjects of law.

In 1732, Mr Home published a small volume, under the title of *Essays upon several Subjects in Law, viz. Jus Tertii, Beneficium cedendarum actionum, Vinco vincentem, and Prescription.* The subjects handled in this volume had been suggested by his employment as a counsel in several causes of importance, in which he had found it necessary to canvass those particular topics with great attention; and perceiving, in the course of that discussion, a wider field opening to his view than what fell properly within the limits of his cause, and a prospect presented of curious and important juridical investigation, it was his employment, in the course of a summer's vacation spent in the country, to digest his thoughts on those topics into the form of Essays.

From the logical and systematic method which Mr Home pursues in all his juridical

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disquisitions, it is in general extremely easy to analyse, and present a view of them in abstract. I do not mean, however, to prescribe to myself a task of this nature, which, if discharged in its full extent, would swell this work beyond all moderate bounds: But, as these Essays afford an excellent example of the mode of reasoning which the author pursues in most of his jurisprudential writings, and furnish, as I think, an useful model for that species of investigation, some short account of the train of reasoning which they contain, without aiming at any regular analysis, may perhaps not be deemed altogether out of place, in a work which professes something more for its object than mere amusement.

Jus Tertii.

Essay 1.—No man is allowed to plead a point, in the gaining of which he has not a legal interest: However just and equitable the plea, it is *jus tertii* to him. The difficulty lies in determining what is a legal interest. The law does not allow any accidental or eventual benefit, which may or may not result to the plaintiff, to be such an interest. It must be a positive and certain

advantage; although it may not be direct and immediate, but only indirect and consequential. Another requisite is, that the interest be founded in justice: a possessor may hold a subject of value, without a shadow of title: his interest to continue his possession is positive and certain; but he will not be admitted to contend with those who have a colourable title to the property. A debtor has a legal interest to question the right of an assignee to the debt; because, till assured of that right, he cannot pay with safety: but a creditor has no title to object, that the party who offers him payment is not truly the debtor; for his only just interest is to receive payment of his debt. It is easy to see, that under this doctrine of the law, which is strongly founded, both in the principles of justice, and in sound political wisdom, there may be ranged a great variety of cases, involving the most nice and subtile distinctions; and of these the author gives many apposite examples, from the reports of questions decided in the Court of Session, which are are to be found in the Collections of Stair and Fountainhall, and likewise from

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cases occurring in the recent practice of that Court.

Beneficium cedendarum actionum.

ESSAY 2.—It is a rule of law, that where a creditor has different persons bound, or subjects impignorated to him for the security of his debt, he cannot make an arbitrary use of these securities, by loading one, and exempting another from the burden; unless it shall be manifestly for his interest to prefer the drawing of his payment from one source rather than another: for such arbitrary preference may materially injure his fellow creditors; and the law obliges every man to use his rights in the way least hurtful to his neighbour. The Roman law obliged the creditor, in cases where his interest allowed him to exercise this preference, to assign over to his co-creditors the separate securities, of which he had made no use; a regulation termed the *Beneficium cedendarum actionum*; and it allowed the co-creditors to avail themselves of those securities for their payment, to the extent of the shares which his debt might have drawn out of them. The law of Scotland goes a step farther; for it allows this benefit to operate

ipso jure, and without the necessity of an assignation, unless in a few special cases. This is a doctrine manifestly founded in justice, but of which the application is often extremely difficult, from the intricacies arising, both from the nature of the securities, and the order of preference in the different classes of creditors. In his Essay on this subject, the author, with great ingenuity, analyzes the doctrine in all its branches; reducing it to a series of distinct propositions, all flowing from the general maxim; and illustrating these propositions, partly by fictitious cases, and partly by the recorded judgments of the Court.

Vinco vincentem.

Essay 3.—The Essay which follows, under the title of *Vinco vincentem*, is founded on the doctrine established in the two preceding dissertations: and as the principal object of the latter of these two, was to lay down the rules by which creditors, universal and secondary, are entitled to draw their payment from the several persons and subjects burdened with their debts, the design of this Essay is to trace out those rules which regulate the order and preference of

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creditors entitled to draw payment from the same subject.

Prescription.

Essay 4.—The volume is closed by a Treatise on the *Doctrine of Prescription*, which is strongly characterized by that philosophical turn of thought, which was congenial to the mind of its author; but his ingenuity has here, as sometimes happened, led him into error. It has been customary with most writers, to consider Prescription as purely the creature of positive law, and as having no foundation in the law of nature. We naturally receive an opinion of this sort with an unfavourable prejudice; for it is a painful consideration, that law and justice should in any instance stand in opposition. It was a prevailing desire of Mr Home, to seek, in the principles of human nature, for the foundation of every rule of wisdom and expediency; and hence he was led to controvert, as he has done with great acuteness, and certainly with some plausibility, this opinion of Grotius, Puffendorf, and the writers on natural law. He puts the case, that a man loses a jewel of value: For some time he regrets his loss, and tries

all means to recover his property. While that feeling continues, the jewel is as much his property as ever. But time weakens this affection: he abandons his endeavours for the recovery; and the loss at length wears out of his mind. The author's position is, that with the cessation of that affection and consciousness, the connection of the former owner with that which was once his property, is as completely dissolved, as if he had voluntarily relinquished it. A specimen of Mr Home's manner of discussion, and of his style, at this early period, when few writers in Scotland (as I shall afterwards more particularly notice) seem to have turned their attention to the cultivation of style, may be properly taken from the Essay we are now considering.

"Let us now put the case, that the jewel "is found, by a person, who, after using all "the proper means for discovering an own-"er, takes it up upon the footing of derelic-"tion. To make the case stronger, instead "of a jewel, let us suppose a piece of "ground, or something else, that the finder "may possibly imagine had never been ap-

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"propriated. He continues to possess as a "proprietor. He lays out money, builds a "house, and makes great embellishments. "The estate descends from father to son. "The natural affection increases by time "to this paternal inheritance, which has "been now in the same family, if you will, "for several centuries. At last, the former "proprietor comes, and claims the ground; "he shews after what manner his predeces- "sors were led to forsake their country and "possessions. During all that interval, "they had been abroad in another land, "where they fixed their heart and resi- "dence, without the least view or prospect "of ever revisiting their native soil; till, "by some accident, like the former, fortune "led them back to the country from whence "they originally sprung. Let any man "consider seriously this case, and consult "his own heart about it, he will find this "claim to be against nature and reason. "The demand has no other foundation but "a *quondam* property, long ago deserted, "and given over for lost. 'Tis directed "against a person whose predecessors have "been *bonâ fide* in possession time out of

" mind, and justly esteemed themselves
" truly proprietors. A demand of this kind
" is obviously against nature. The first
" proprietor deserted his possession, lost
" his affection to it, whereby, as to all real
" effects, the case comes to be the same as
" if it had never been his. Another person
" is suffered peaceably and honestly to take
" up the deserted possession: he has no
" reason to be suspicious of this, more than
" of any other vacant spot of ground. His
" affection grows to the subject as his own
" property; it becomes as strong as if he
" had bought it, nay, we may suppose he
" actually bought it, or obtained it by some
" other the most indisputed title. If the
" law thereafter take it from him, it takes it
" from a man who cannot help thinking it
" unjustly torn from him, and who is there-
" by made a real sufferer, to be given to
" another whose pretensions are quite worn
" out by course of time, and who is thus
" made *locupletior alienâ jacturâ*. It can
" never be in the law of nature to indulge
" such hardships. It will be granted to be
" perfectly agreeable to human nature, that
" a man indulge his affection in such acqui-

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" sition. At first, indeed, it is reasonable " to have some doubts; these must wear " off necessarily by the course of time, till " at the long run, the possessor acquires the " most solid affection to, and security in, " the thing as his own. After so good a " foundation built in human nature, it never " can be agreeable to the laws of that na- " ture, to overturn such a foundation, by " wresting the property from him; which " were in other words to say, that nature " dictates to be secure, and insecure at the " same time.

" The matter comes here in one word, " the longer a man possesses *bonâ fide*, the " greater is his security in the thing, and " affection to it, till at length both become " extreme. The laws of nature ought to " protect every possessor in reasonable se- " curity and affection, which are of nature's " growth, and not prefer him who has nei- " ther security nor affection. And thus, " *by the law of nature, a long continued* bo- " nâ fide *possession, is a good title for acqui- " ring property.*"

We may allow to this reasoning the praise of ingenuity, but it will not bear a strict examination. The conclusion is evidently drawn from false principles; and the argument contains more than one error in its premises. The feeling of affection is here made the criterion of property: whereas constant experience shews us, that there may be the strongest affection where there is no property, and, on the contrary, a very weak feeling or none, of affection, where the right of property is indisputable. Were affection a title of property, it would prove the better right to be in the robber, who risked his life to demonstrate his affection to his neighbour's purse, than in the latter, who parted with it to avoid his personal danger. The man who, having lost a jewel, ceases after some time to seek for it, does not by so ceasing give any evidence that he voluntarily relinquishes it, from having lost his affection to it. It is against his will, and with regret, that he feels himself compelled to abandon the search. He loses not the desire, but the hope of finding it; and he quits the pursuit, only as choosing the least of two evils, the loss of his jewel; in

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preference to the loss of his time and labour in a hopeless exertion. On the other hand, the finder of the jewel, whatever may be his affection, which we may grant to be extremely strong, can never acquire the right of property, while he wants that *bona fides* which is essential to that right: but the finder can never have that *bona fides*; for a costly gem, bearing evidence of property, is never to be presumed *res nullius*. The same may be said of a piece of ground, which never can be presumed to be *res nullius* in a civilized country. Should it be said that the heir of the finder or the occupier, who knew not the mode of acquisition, may have that *bona fides*; the answer is, his *bona fides* is founded on a presumption, namely, of purchase or of gift in the person of his ancestor; but every presumption must yield to truth, and when the right owner appears, the presumption is at an end. What then, it may be asked, is the foundation of a prescriptive title? Plainly this, which Grotius, Puffendorff, and all the jurists have assigned; and which even Mr Home himself involuntarily resorts to in his subsequent reasoning, though unwilling to allow it its due

place as a principle *: It is expedient for the good order of society, that a long continued possession should not be disturbed on slight pretences: and that claim must be presumed a slight one, which, in a long period of time, has never been moved: the direct evidence of property may have perished through neglect or natural decay, and false evidence might easily be substituted in its stead. It is political expedience, therefore, which is the foundation of prescription; and prescription can no otherwise be said to be consonant to the law of nature, than as it is agreeable to that law, that the best precautions should be taken to ensure the good order and peace of society.

But although in the foregoing Essay the author may have erred in speculating abstractly on the origin and foundation of prescription, the doctrine itself is handled in a masterly manner in all its principal branches.

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* "As from the nature of the thing, titles to property are extremely uncertain, it is the interest of mankind, that they be keeped secure against after-reckonings of this nature."—*Essay on Prescription*, p. 105.

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Its partial coincidence with the Roman *Usucapio*, and the points in which it differs, are distinctly noted: and the most material positions are illustrated by examples from the recorded judgments of the Court.

These Essays * procured to their author the character of a profound and scientific lawyer; and from the period of their publication, we find Mr Home engaged in most of the causes of importance which occurred in the Court of Session.

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* The substance of the Essay, entitled, *Beneficium cedendarum actionum*, was afterwards inserted by the author into his work, entitled, *Principles of Equity*; and the other three Essays were republished, in an amended form, in his *Elucidations respecting the Law of Scotland*.

CHAPTER III.

Mr Home's social turn, and early friends.—Colonel Forrester.—Hamilton of Bangour.—Authors of the Edinburgh Miscellany.—Earl of Findlater.—Oswald of Dunikeir.—Letters from him to Mr Home.—David Hume.—Letters from him.—Dr Butler.

CHAP. III.

Mr Home's social turn and early friends.

Mr Home, in every period of his life, was fond of social intercourse; and, with all his ardour of study, and variety of literary and professional occupations, a considerable portion of his time was devoted to the enjoyments of society, in a numerous and respectable circle of acquaintance. In his earlier days, the warmth of his affections, a happy flow of animal spirits, which disposed him to enter keenly into every innocent frolic, and a great power of animated and sprightly conversation, made his acquaintance be

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eagerly courted by the gay young men of fashion, who acquired some consequence in their own esteem, from being the friends and companions of a man of science and a philosopher *: Nor can we doubt the beneficial effect of such a pattern on the general circle with which he associated †. But, on

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* The following anecdote is much to Lord Kames's honour. During the first years of his attendance on the bar, when his finances were very slender, and quite unequal to that expensive style of living in which his companions had engaged him, he found, on summing up his accounts, that he had unawares contracted debts to the amount of L. 300. "What is to be done? (said he,) I must not burden my "father with this: he cannot afford it.—I withdrew at once "from that society, and lived in the most private manner, "till I had cleared off the debt."—*Mr Boswell's MSS.*

† To this purpose is the following just remark of an ingenious and learned friend, to whom I owe much valuable information on the subject of these Memoirs. "The influence "of Mr Home's conversation upon his friends and compa- "nions who had a turn for letters, was, from all I have been "able to collect, great and powerful. We, who only knew "him in the evening of his life, may easily figure how bril- "liant and persuasive must have been his wit and eloquence "in the ardour of youth, when he wished to impress young "men, ambitious of treading in his steps, with a passion for "Polite Literature, or what he considered as *Divine Philo-* "*sophy*. No man in his time did more to disseminate the "seeds of science among his countrymen, even at the time "when he was immersed in business and professional studies." —*Letter from Mr* RAMSAY *of Ochtertyre.*

his side, attachment and real friendship were always the result of a discriminating choice. His familiar companions were men of talents, of wit, and of polished manners, in whose conversation he found a pleasing relaxation from the fatigues of study, or the irksomeness of professional labour; and whose congenial minds fitted them at once to relish and improve the enjoyments of the social hour.

There was a time when, (as we of the present age have heard from our fathers), the fashionable circles in the Scottish metropolis were adorned by a class of men now unknown and utterly extinct; or whom, if their successors in the world of fashion have ever heard of, they seem at least to have no desire to revive, or ambition to emulate: men who, under the distinguishing title of *Beaux*, or *fine gentlemen*, united an extensive knowledge of literature, and a cultivated taste, to the utmost elegance of manners, of dress, and of accomplishments: men whose title to be leaders of the mode was founded on an acknowledged superiority, both in exterior graces, and in mental en-

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Colonel Forrester.

dowments. Such men were Colonel FORRESTER, author of a valuable little tract, entitled, *The Polite Philosopher* *, and of whom Dr Samuel Johnson emphatically said,

"He was himself *The Great Polite* he drew;"

Lord BINNING, who wrote some of the most tender and elegant of the Scottish

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* FORRESTER'S *Polite Philosopher* is of a species of composition of which we have very few examples in the English language. The subject is handled in an easy, rhapsodical, and desultory style, intermixing alternately prose and poetry, in the manner which has been successfully practised among the French by Chapelle and Bachaumont, and in a few instances by Voltaire; and which seems to have been adopted in imitation of the mixed composition of *Petronius Arbiter*. The *Polite Philosopher* professes indeed to have taken the latter author for his model:

When gay PETRONIUS, to correct the age
Gave way, of old to his satirick rage,
This motly form he for his writings chose
And chequer'd lighter verse with graver prose.
When with just malice he design'd to show
How far unbounded vice at length would go.
In prose we read the execrable tale
And see the face of sin without a veil:
But when his soul, by some soft theme inspir'd
The aid of tuneful poetry requir'd,

songs; HAMILTON of Bangour, whose poetical merits have deservedly assigned him a place among the British Classics; and the Club of Wits who frequented *Balfour's* Coffeehouse, (the miniature of *Will's* or *Button's*), in the earlier part of the eighteenth century. These were the favourite compa-

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His numbers with peculiar sweetness ran,
And in his easy verse we see the man,
Learn'd without *pride*, of *Taste correct*, yet free
Alike from *niceness* and from *pedantry*;
Careless of wealth, yet liking decent show;
In fine, by birth a *Wit*, by trade a *Beau*.
Freely he censur'd a licentious age;
And him I copy, though with chaster page;
Expose the evils in which brutes delight,
And shew how easy 'tis to be *polite*;
Exhort our erring youth—to mend in time;
And lectures give—for memory's sake—in rhime:
Teaching this art to pass through life at ease,
Pleas'd in ourselves, while all around we please.

To the wisdom of the didactic precepts contained in this Essay, we cannot give a praise beyond their merits; for they are the result of much good sense and knowledge of the world: but the style, it must be owned, is rather beneath the importance of the matter, and bears evident marks of a hand unpractised in composition. It is somewhat singular that the poetical parts are more happily turned, and in better taste, than the prose.

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nions of Mr Home; and with some of them, as appears from his correspondence yet preserved, he seems to have maintained the strictest friendship, and to have indulged in the most intimate communication of sentiments and opinions. I know not precisely at what period his acquaintance commenced with Colonel Forrester; but I find, amidst the correspondence I have mentioned, (and from which I shall occasionally draw some valuable materials for these Memoirs), a letter, (without a date, but which I conjecture to have been written between 1730 and 1735), from which I shall make an extract; trusting that my reader will not be displeased to see what were the topics which *then* engaged the attention of our Scottish *men of fashion*.

Mr FORRESTER *to Mr* HOME.

"My dear Home, I hope, will no longer doubt of his entire command of Forrester, when, to obey him, I quit the alacrity of the *Petit-maître* for the phlegmatic panegyric of a Dutchman. I shall send you an elaborate poem to prefix to the *Opera Homiana*,

and which I shall conclude with a saying from Apollo himself:

Quid fatigas teque nosque? Homio præconium
Maximum est favere linguis, nec loqui de Homio;
Quippe ut hic, et ille, et iste cuncta dixerit,
Homium laudare nemo quiverit nisi Homius *.

" My dear Home has rightly pitched on the most flagrant piece of prudery that is to be met with in all history: and I am truly surprised, that we should ever have instanced *Lucretia*, as the model of chastity, whom you have made appear so very a prude; since she gave the reality to preserve the reputation of it. She has been, I suppose, of opinion with some of our moderns, who say, Reputation is the soul of virtue: and indeed, like the soul, I believe it often lives when the body's dead! If this was her notion, she would be acquitted by the Chris-

* The writer had probably in his mind the refined eulogium of Cicero by Livy: " ——— Vir acer, memorabilis, " et in cujus laudes persequendas, Cicerone laudatore opus " fuerit."—Livii *Fragmenta*.

tian system, which teaches the sacrifice of the body for the preservation of the soul.

" Your other disquisition, I believe, may lead you farther back; and I am apprehensive you will find coquetry to have been one of the first things discovered even in the first of women. For I think the surprise Eve shews upon seeing herself reflected in the watery mirror, has a strong dash of the coquet:

As I bent down to look, just opposite
A shape within the wat'ry gleam appear'd
Bending to look on me; I started back;
It started back;—but pleas'd I soon return'd;
Pleas'd, it return'd as soon, with answering looks
Of sympathy and love.———— *.

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* Mr Forrester is not the first who has given to female coquetry an origin of such high antiquity. The following epigrammatic sonnet of Sarrazin, is as remarkable for its wit as for the *naïve* simplicity of its language:

Lorsqu' Adam vit cette jeune beauté
Faite pour lui d'une main immortelle,
S'il aima fort, elle de son coté
Dont bien nous prend, ne lui fut pas cruelle.

But as I can say nothing new to you on any subject you have thought of, I shall quit the prude and the coquet, to entertain you with a person, who, without the smallest tendency to either of these characters, has ever been successful in what they both aim at, and whilst she is in reality the best of women, is undesignedly the wish of every man. I send you her last letter to me, with one also from the lady who is the channel of our correspondence. I hope they will amuse you, and I am sure they would give you pleasure, did you know the pleasure

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Mes chers amis, alors en vérité
Je crois qu'il fut une femme fidelle;
Mais comme quoi ne l'auroit elle été?
Elle n'avoit qu'un seul homme avec elle.

Or, en cela nous nous trompons tous deux,
Car bien qu'Adam fût jeune et vigoureux,
Bien fait de corps, et d'ésprit agréable;
Elle aima mieux, pour s'en faire conter,
Prêter l'oreille aux fleurettes du diable,
Que d'être femme, et ne pas coquetter.

The above sonnet of *Sarrazin* has been admirably translated in Latin verse by *M. de la Monnoye*. See Poésies de M. de la Monnoye, p. 223.

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they gave your humble servant. I shew a greater confidence in trusting you with these letters, than Burlington could in sending you originals of Raphael.——But judge yourself, and return them by the first opportunity; for I am not yet certain whether I can come your way. If I can, you may be sure I will; since I should lay in pleasure enough with you to entertain me all the rest of my journey.—I blotted out the names in the letters, and may mine be so served in the Book of Life, if I don't wish your happiness, as I do that of

JAMES FORRESTER."

Hamilton of Bangour.

With the elegant and accomplished WILLIAM HAMILTON of Bangour, whose amiable manners were long remembered with the tenderest recollection by all who knew him, Mr Home lived in the closest habits of friendship. The writer of these Memoirs has heard him dwell with delight on the scenes of their youthful days; and he has to regret, that many an anecdote to which he listened with pleasure, was not committed to a better record than a treacherous memory. Hamilton's mind is pictured in

his verses. They are the easy and careless effusions of an elegant fancy and a chastened taste; and the sentiments they convey are the genuine feelings of a tender and susceptible heart, which perpetually owned the dominion of some favourite mistress; but whose passion generally evaporated in song, and made no serious or permanent impression. His poems had an additional charm to his cotemporaries, from being commonly addressed to his familiar friends of either sex, by name. There are few minds insensible to the soothing flattery of a poet's record. I question whether his friend Home was ever more highly gratified by the applause he gained for his talents on the success of a legal argument, than by the elegant lines addressed by Hamilton, *To H. H. in the Assembly.*

While crown'd with radiant charms divine,
Unnumber'd beauties round thee shine,
When Erskine leads her happy man,
And Johnston shakes the flutt'ring fan;
When beauteous Pringle shines confest,
And gently heaves her swelling breast,

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Her raptur'd partner still at gaze
Pursuing thro' each winding maze;
Say, Harry, canst thou keep secure
Thy heart, from conquering Beauty's power? &c.

Hamilton's letters are, like his verses, the transcript of his feelings. Mr Home had sent him a few remarks on Horace; of the same tenor, as it would seem, with those observations which, many years afterwards, he gave to the world in his *Elements of Criticism**. In a letter, dated September 1738,

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* "In Horace there is no fault more eminent than want "of connection: instances are without number. In the first "fourteen lines of Ode 7. lib. i. he mentions several towns "and districts which by some were relished more than others: "in the remainder of the Ode, Plancus is exhorted to drown "his cares in wine. Having narrowly escaped death by the "fall of a tree, the poet takes occasion properly to observe, "(lib. ii. Ode 13.), that while we guard against some dangers, "we are exposed to others we cannot foresee: he ends with "displaying the power of music. The parts of Ode 16. lib. ii. "are so loosely connected, as to disfigure a poem otherwise "extremely beautiful. The 1st, 2d, 3d, 4th, 11th, 24th, 27th "Odes of the 3d book, lie open, all of them, to the same "censure. The first satire, Book i. is so deformed by want "of connexion, as upon the whole to be scarce agreeable: It "commences with an important question, How it happens

to Mr Home, then passing the autumn vacation at Kames, Hamilton thus writes:

"I am entirely of your opinion with respect to your observations on Horace. He

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"that people, though much satisfied with themselves, are seldom so with their rank or condition? After illustrating the observation in a sprightly manner by several examples, the author, forgetting his subject, enters upon a declamation against avarice, which he pursues till the line 108: there he makes an apology for wandering, and promises to return to his subject; but avarice having got possession of his mind, he follows out that theme to the end, and never returns to the question proposed in the beginning."—*Elements of Criticism*, vol i. ch. 1.

This censure of Lord Kames has given occasion to an ingenious vindication of the poet by C. D. JANI of Leipzig, who, in his excellent edition of the *Odes of Horace*, has shown, that the apparent want of connexion which the English critic has remarked, and which has been noticed by Dacier and others of the commentators, arises from not taking into view the historical circumstances which gave occasion to the several odes thus censured; whence their scope and tendency, and the connexion of their parts, have not been fully perceived. Thus, in the first of the odes alluded to, lib. i. Ode 7. when we are informed, that Plancus, from grief at losing the favour of Augustus, to whom his versatile and intriguing temper had become suspected, had determined to leave his beautiful villa at Tibur, quit Italy, and retire to some of the

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certainly wanders from his text,—but still they are the wanderings of *Horace*. Why we are never contented with our lot, but still envy the condition of others, was a noble subject; and it were to be wished he had adorned it, as well he could, from his own experience; satisfied, as he seems to have been, with his own pursuits, and the fame they had acquired him. Let me put Ho-

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Grecian cities or isles; we discern immediately the whole connexion of the ode, and admire the art and delicacy of the poet, who, in this elegant composition, endeavours to dissuade his friend from his purpose, and prevail with him to abandon a public life, and devote his time to social enjoyments in his beautiful retreat on the banks of the Anio. With similar ingenuity and judgment, the learned commentator removes the ground of Lord Kames's censure of the other odes above mentioned. The edition of *Horace's Odes* by Jani, is entitled to the highest praise. It is not the work of one of those dull commentators, *qui acumen frigidum pro nisu poëtico, artem rhetoricam et grammaticam pro poëticâ intulerint,—copiosi scilicet et ad fastidium docti;* but of a kindred genius, who feels the true spirit of his author, kindles with his enthusiasm, and sympathizes with his tone of mind in all its varied emotions. It is much to be regretted, that this valuable edition has never been completed, extending no farther than to the four books of Odes.

race's question to myself, Why don't I acquiesce in the determination of Heaven, to which I have myself so much contributed? Why don't I rest contented with that, small perhaps indeed, but sincere portion of happiness furnished by my poetry, and a few kind friends? Why concern myself to please *Jeanie Stewart*, or vex myself about that happier man to whom the lottery of life may have assigned her? *Quî fit, Mecænas, quî fit?* Whence comes it? Alas, whence indeed?

Too long by love, a wand'ring fire, misled,
My better days in vain delusion fled:
Day after day, year after year withdrew,
And beauty blest the minutes as they flew.
Those hours consum'd in joy, but lost to fame,
With blushes I review, but dare not blame:
A fault which easy pardon might receive,
Did lovers judge, or could the wise forgive! *

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* ——————— *dementia cepit amantem,*
Ignoscenda quidem scirent si ignoscere Manes.

VIRG.

But now to wisdom's healing springs I fly,
And drink oblivion of each charmful eye;
To love revolted, quit each pleasing care,
Whate'er was witty, or whate'er was fair.

"Yours," &c.

To seek the aid of *wisdom* for the cure of *love*, is no doubt a prudent resolution; but here the question may be put, (as of *Glendower's spirits*), Will wisdom come when the lover calls for her? His friend Home, who had a deeper knowledge of human nature, saw a better cure for a frivolous and idle passion. The lady mentioned in the letter above quoted, had complained to Mr Home, that she was teased with Hamilton's dangling attentions, which she was convinced had no serious aim, and hinted an earnest wish to get rid of him: "You are his friend," said she: "tell him he exposes both him-"self and me to the ridicule of our acquaint-"ance."—"No, Madam," said Mr Home, "you shall accomplish his cure yourself; "and by the simplest method.—Dance with "him at to-night's assembly, and shew him "every mark of your kindness, as if you "believed his passion sincere, and had re-

"solved to favour his suit. Take my word "for it, you'll hear no more of him." The lady adopted the counsel, and the success of the experiment was complete.

It appears from Hamilton's letters, that he communicated his poems to his friends for their critical remarks, and was easily induced to alter or amend them by their advice. He had sent the piece entitled *Contemplation*, one of the most laboured of his productions, to Mr Home, who suggested some alterations. In a letter from Hamilton, in July 1739, he says, "I have made "the corrections on the moral part of *Con-* "*templation*, and in a post will send it to "WILL. CRAWFORD, who has the rest, and "will transmit it to you. I shall write to "him fully on the subject." It is pleasing to remark, that the Will. Crawford here mentioned, was the author of the beautiful pastoral ballad of *Tweedside*, which, with the aid of its charming melody, will probably live as long as the language is understood.

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Authors of the Edinburgh Miscellany.

HAMILTON may be reckoned among the earliest of the Scotch poets who wrote English verse with propriety and taste, and with any considerable portion of the poetic spirit. THOMSON, MALLET and he were cotemporaries. The preceding writers of English verse among the Scotch, are scarcely entitled to the name of poets. A very indifferent collection of English verses, under the title of *The Edinburgh Miscellany* *, was published in 1720, among which are some of the earliest productions of Thomson and Mallet; and, in particular, a piece by the former, "*Of a Country Life, by a*

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* Of this publication, MALLET gives the following account: "The *Edinburgh Miscellany* was undertaken by an *Athenian* "*Society* here, who received the poems, and published all they "thought worthy of seeing the light. The gentleman to "whom I inscribed my *Pastoral* is one of their number. His "name is Mr Joseph Mitchel, author of the *Lugubres Cantus*, a poem to the memory of Mr Ford. Mr Callender, "who is written C————r, is an ingenious young gentleman, and is author of the second part of the *Lugubres* "*Cantus*. Who the ladies are, scarce any one knows. The "gentleman in the University whose productions are marked "with an S, is one Mr Symmers, a boy of fifteen, and very "sprightly."—DR ANDERSON'S *Life of Mallet*.

"*Student in the University*," in which it is curious to mark the hand of the author of *The Seasons*, and to trace in some faint degree the rudiments of that immortal poem. In this collection are a few small pieces, which, on the authority of Lord Hailes, I I am led to believe, were written by Mr Home *: They are of no considerable merit; and their author, as Lord Hailes properly remarked, "had the good sense very "soon to perceive that poetry was not his "*fort*."

Among the early friends of Mr Home, were some men whose talents, of a superior order and graver cast, fitted them to discharge with honour the most important duties in the State, or have ranked them high in the annals of literature. JAMES, fifth Earl of FINDLATER, then Lord Deskfoord, whose benevolent mind and truly patriotic spirit were indefatigably exerted in every

Earl of Findlater.

* The name prefixed is spelled HUME; but the surnames are identically the same, and are pronounced alike.

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scheme which had for its end the improvement of his country, was assiduous in courting a correspondence with Mr Home, on various topics of politics, national economy and jurisprudence; and many letters from that nobleman are yet preserved, which reflect the highest honour both on the qualities of his head and heart.

Oswald of Dunikeir.

With the late Mr Oswald of Dunikeir, whose great knowledge of political economy rendered him one of the most useful, as his disinterested patriotism, one of the most respectable of the Scottish Members, during the many years he sat in Parliament, Mr Home was connected by the closest bond of friendship. It was Oswald's custom to write to his friend Home on the daily business that occurred in Parliament, and to consult with him on any point of difficulty on which his mind was undecided. I shall insert here a few of these letters, which, while they are strongly characteristic of the writer, are interesting, from the nature of the subjects to which they relate, and the persons whom they mention.

From Mr OSWALD *to Mr* HOME.

" *London*, 14*th Dec.* 1741.

" DEAR HARRY,

" According to the promise in my last, I would have sent you the *Second Night of the Complaint* *, though I don't think it so good as the first: but I understand Sir Hugh has sent it to Willy Hamilton, and by this time you must have seen it. It is the only tolerable new thing that has appeared this winter, except in politics; in which the *Case of the Hanover Troops*, by Lord M——t, and *Miscellaneous Thoughts*, by Lord Harvey, are both esteemed. If you have them not in Edinburgh, let me know, and I will send you them. Since my last, the most important point of this session has been pretty fully discussed, and is, this night, entirely determined: I mean,

* Dr YOUNG's.

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that of the 16,000 Hanoverians taken into British pay. The Ministry endeavoured to shew, that this measure was a necessary consequence of the advice given last year to the Crown, of assisting the Queen of Hungary: that it was become a necessary measure, by the sending abroad of 16,000 British troops; and that Hanover troops, under these circumstances, were the most expedient. They were opposed on each of these points." *(Here follows a detailed account of the debate).* "This question has been agitated in three different debates. On the first day MURRAY was introduced to support the Court, which he did in a set speech, extremely methodical, with great perspicuity, and very fine colouring. He was replied to by PITT, who, in the most masterly manner, laying hold of the weakest parts of his speech, with the greatest strength of expression, and in the most manly style I ever witnessed, turned almost all his colours against him. Murray had laid a good deal of stress on exposing the inconsistency of advising one thing the one year, and the next abusing it, merely through a spirit of opposition. Pitt show-

ed how the object was varied; but varied by the Ministers, and then turned every argument Murray had employed against himself. The one spoke like a pleader, and could not divest himself of a certain appearance of having been employed by others. The other spoke like a gentleman, like a statesman, who felt what he said, and possessed the strongest desire of conveying that feeling to others, for their own interest, and that of their country. Murray *gains* your attention by the perspicuity of his arguments, and the elegance of his diction. Pitt *commands* your attention and respect, by the nobleness, the greatness of his sentiments, the strength and energy of his expressions, and the certainty you are in of his always rising to a greater elevation both of thought and style: For this talent he possesses beyond any speaker I ever heard, of never falling, from the beginning to the end of his speech, either in thought or in expression. And, as this session, he has begun to speak like a man of business, as well as an orator, he will, in all probability, or rather at present, is allowed to make as

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great an appearance as ever man did in that House. Murray has not spoke since, on the other two debates, where his rival carried all before him, being very unequally matched with Pelham, Young, and Winnington. I dare say you will scarce be able to read this scrawl, which I have drawn to an immeasurable length, from the difficulty I find in having done, when Pitt is the subject; for I think him, sincerely, the most finished character I ever knew."——

From Mr OSWALD *to Mr* HOME.

"*24th December* 1741.

"DEAR HARRY,

"I received your letter, and opinion, which gives me very great pleasure. It corresponds with my own notion, and may, I hope, be useful to my friend Sir Hugh; for I shall now be able to assert with confidence, if necessary, what I must otherwise have urged with the utmost diffidence. You will see by the printed votes, that the Westminster election has been declared void. I

dare assure you, if you will trust my opinion, with the greatest justice. The High Bailiff, who is the returning officer, closed the poll, by shutting up the books, on pretence of a riot, when several voters present were demanding to poll: and afterwards, on pretence of the same riot, a party of soldiers were called in; in whose presence the declaration of the poll was made. The point in debate, you will see, was, whether the poll was legally shut or not. If legally closed, the appearance of the soldiers could not be said to have influenced the election. If not legally closed, it was an act of violence, which the military force was called in to support. It was urged on the Court side, that the poll is over, when the books are shut by the proper officer; and that this was not done, till the crier had made three proclamations: but by their own evidence, it appeared, that only five minutes had intervened between each proclamation; so that the interval of ten minutes had frustrated many of their votes who had a right to poll. You will easily see that this argument might have been turned against them. An injustice done under form of law, is

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more impatiently suffered than an act of violence: So says Thucydides: It is in reality more unjust; for it is an insult on a man's understanding, as well as on his right. This maxim might have been confirmed in a particular manner from the English history. What was it that lost King Charles his head? What, King James his Crown and glory? It was not that the one raised money without law, and that the other suspended the penal statutes: but that both those unhappy princes procured judgments in their favour by the Courts of Westminster.—These topics came into my head during the debate: but it was late before the counsel had done; the House called for a division, and even the ablest speakers were heard with impatience. So, I chose to be silent, rather than from any reluctancy to speak. The vote was carried against the Court by 220 against 216. Never was a case better opened, nor a reply made in a stronger manner, than was done by Murray in this case. The man is a miracle. No argument was missed; none urged but with the greatest precision: no circumstance omitted which could create an

impression; none thrown in, but with the greatest propriety that judgment could suggest, or fancy improve. The Courtiers are in the utmost consternation,—the Patriots inflexible: What the holidays will produce is left to fate. Yours,

JAMES OSWALD."

From Mr OSWALD *to Mr* HOME.

——" Since my last, we have had nothing before us but questions concerning elections: Yet these have produced both debates and divisions, which to us have appeared of some importance. The first question was concerning a borough election in Cornwall.———The Court party quoted precedents. Five of these were from Scotland, and not quite well understood by either side, at least by the managers: so I thought I had a lucky enough opportunity of mixing in the debate; and one of the precedents being from Dysart, was a sufficient excuse for my intrusion. I endeavoured to set the precedents in what I thought their proper light, and was heard

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with attention: no doubt, owing to the indulgence which the House always has for young speakers. What I said seemed to hit the point, and was very well received: No precedent was urged afterwards, and the arguments, from the reason of the thing, were certainly the weakest. I have got some small degree of reputation, which I'm afraid it will be extremely difficult for me to maintain; for you will plainly observe by the account I have given you, that it was chiefly owing to circumstances, and a sort of lucky hit,—partly perhaps to this, that some value is generally put upon what comes from a quarter whence it is least expected."——

From Mr OSWALD *to Mr* HOME.

"*7th January* 1742.

"DEAR HARRY,

"Your last letter gives me the strongest testimony of that lively friendship which I shall ever esteem as one of the greatest advantages I ever enjoyed in life. The con-

cern you express for any false step I may fall into, will, I believe, be one of the strongest motives I can possibly have to be upon my guard. Your opinion as to general reflections is certainly just; yet if short, and sparingly used, I observe they meet with very great approbation even from the youngest speakers; especially if drawn from English history, or if relative to the constitution. These topics are so familiar, and yet so interesting, that they always strike, and are never heard without pleasure. A young man, who shews but a very small knowledge on these subjects, is almost adored. Flowers of rhetoric, especially in style and expression, are a good deal more dangerous; and I could name several, whom their attachment to this sort of speaking has absolutely spoilt: for ornament without matter is of all things I know the most disgusting. And I look upon attempts of this kind as the more foolish, that I am convinced whoever makes it a rule never to speak without a knowledge of his subject, must by degrees acquire as much of rhetoric and ornament as is necessary; and am satisfied, that what leads into the other preposterous method, is

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mere laziness and aversion to business. But whatever may be in this, the surest way of becoming remarkable *here* is certainly application to business; for whoever understands it, must make a figure."———

From Mr OSWALD *to Mr* HOME.

"*4th February* 1742.

———"I wrote you last post, that parties were in some measure come to a crisis, and that we were in expectation of a debate upon the supplies, which would probably determine the dispute about power. The affair is now over. Sir Robert, on the night of our division upon the Chippenham election, divested himself of all his employments; and, the next day, the King, coming to the H. of Peers, signified his pleasure that the two Houses should adjourn for a fortnight. The intention of this was to give his Majesty time to choose his new Ministry. You may guess what a scramble there is like to be about places, &c. Per-

haps our new Ministry may continue honest men even after they get power: but I would not have the safety of my country depend upon a chance; and such, a virtuous Ministry is, and always must be."———

From Mr OSWALD *to Mr* HOME.

"*6th March* 1742.

———"As to the two different plans of administration, though I am a profest sceptic as to political events, yet I don't know how, I have become a sort of dogmatist in favour of the broad bottom; it seemed to me to be the only proper plan of settling both the constitution and administration on a solid and formidable foundation: And as to its reverse, I always abhorred it; because I saw it must necessarily have been carried on by a much wider system of corruption than that employed by the last administration. But this you will say, though it might be a good reason enough for not approving it, yet it might not perhaps be quite so good to infer its want of success. Corruption is

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at all times a powerful engine; but how much more powerful must it prove, when it is to be employed by the ablest; and the scheme for which it is to be employed, is, from a strange fatality, to be patronized by the honestest and most disinterested men in the nation? Yet, notwithstanding of these apparent difficulties, I continued firm to my opinion; and the narrow bottom, in my judgment, remained still both a wicked and impracticable plan. You will remember how your friend David Hume and you used to laugh at a most sublime declamation I one night made, after a drunken expedition to Cupar, on the impotency of corruption in certain circumstances: how I maintained, that on certain occasions men felt, or seemed to feel a certain dignity in themselves, which made them disdain to act on sordid motives; and how I imagined it to be extremely possible in such situations, that even the lowest of men might become superior to the highest temptations. What those circumstances, occasions, and situations are, I *feel* much better than I can *express*. The cause of this I am not philosopher enough to determine; but the pheno-

menon is certain: And in some such circumstances or situation, the generality of a great assembly were, I think, obviously, lately; and are, in my opinion, in some degree still *."———

From Mr Oswald *to Mr* Home.

" Dear Harry,

" Nothing can be more agreeable to me, than either to recommend our friend Hume or his book. In either of these cases, the person who recommends, does himself, in my opinion, an honour, as he becomes, in some degree, a sharer of that merit which is in both. But you cannot imagine what a difficult matter it is here at present, to fix

* It has been frequently observed, that a popular assembly, when powerfully wrought upon by an able orator, exhibits a sympathetic union of sentiment or passion as fervent, as if the million were a single individual. To this purpose may be quoted a remark of Bishop Butler, (*Europ. Mag. March* 1790), " Are not bodies of men occasionally seized " with a frenzy, as particular persons are?"

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any man's attention, but for a moment, upon any abstract subject.——Such is the general indolence of mind, that one flashy, lively thing, whether in thought or expression, though in the midst of trash, is more greedily swallowed than the most elegant piece of reasoning.——However, there are some of the young people about the Prince who seem to have a good taste. I go to no Court myself; but, as I have an opportunity of seeing some of these gentlemen, I will do what I can to excite their curiosity, and shall afterwards let you know their sentiments.———I met yesterday in a bookseller's shop with three new parts of *Marianne*, which I don't know if you have yet got at Edinburgh. If not, let me know, and I will send you them down. A ninth part came out some time ago, but was spurious. The others I fancy are by your friend Marivaux. The pictures I think are entirely in his style, and the reflections both natural and delicate. I will no further anticipate your pleasure in reading them."——

From Mr OSWALD *to Mr* HOME.

"*April* 1742.

——"You write me, that it is said in Scotland I absented myself on the Triennial Bill. It is true, I did so; for I thought it an extreme doubtful point, so far as from information I could form any judgment. My not having such sufficient information as I could have wished, concurred to confirm me in thinking it most proper not to give any judgment upon it at all. The nation has now had nearly a pretty equal trial of Triennial and Septennial Parliaments. Neither of them can be called more constitutional than the other. Whichsoever, therefore, by experience, may be said to answer best the purposes of a representation of the people, ought to be, singly from that consideration, preferred. During Triennial Parliaments there was not so much corruption, but there was more canvassing in elections, and business was transacted with greater

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confusion. Controverted elections generally engrossed the first session; and the last was deserted by all who found it necessary to go down to support their interests in the country. The Crown had as great influence by places and promises; and that more money was not then employed, ought not perhaps to be ascribed so much to the difference betwixt a Triennial and Septennial duration, as to this obvious cause, that corruption was not then so general. In a word, it was doubtful, I thought, whether the triennial term would lessen corruption. It was obvious it would increase the expence, and might possibly ruin country gentlemen. A place bill, properly balanced, would have done infinite service. Such a bill would answer all the good purposes proposed by the Triennial Bill, and be liable to none of its bad consequences. On the other hand, in the abstract nothing appears more clear, than that a free people ought as often as possible to have the liberty of changing their representatives. But all abstract propositions in politics are to be guarded against, since the good of the State, in its present circumstances, is or ought to be the ultimate

object. In short, there was such a variety of circumstances to be taken into that question, which I had not full opportunity of considering, and the question itself was of such importance, that I thought it most consistent with my duty to give no judgment at all: and this I performed in as public a manner as I was capable of; by making a very low bow to the Chair, after hearing the debate on both sides."———

It were to pay an ill compliment to my readers, should I suppose any apology were necessary for the length of the preceding extracts from a correspondence illustrative of a character so truly respectable; and one who, in his public capacity, as a member of the Legislature, can never be too strongly recommended as a model of a virtuous and enlightened statesman.

David Hume.

Mr Home's acquaintance with his namesake, the celebrated DAVID HUME, appears not to have been of a much earlier date than 1737. In the latter part of that year, Mr Hume went to London to publish his first

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work, the *Treatise of Human Nature*. In answer to some inquiries relative to the plan of that work, he thus writes to his friend Mr Home, at Edinburgh:

"*To Mr* HENRY HOME, *Advocate, Edinburgh.*

"*London, December* 2. 1737.

"DEAR SIR,

"I am sorry I am not able to satisfy your curiosity, by giving you some general notion of the plan upon which I proceed. But my opinions are so new, and even some terms I am obliged to make use of, that I could not propose, by any abridgment, to give my system an air of likelihood, or so much as make it intelligible. 'Tis a thing I have in vain attempted already, at a gentleman's request in this place, who thought it would help him to comprehend and judge of my notions, if he saw them all at once before him. I have had a greater desire of communicating to you the plan of the whole, that I believe it will not appear in public before the beginning of next winter.

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For, besides that it would be difficult to have it printed before the rising of the Parliament, I must confess, I am not ill pleased with a little delay, that it may appear with as few imperfections as possible. I have been here near three months, always within a week of agreeing with my printers; and you may imagine I did not forget the work itself during that time, where I began to feel some passages weaker for the style and diction than I could have wisht. The nearness and greatness of the event roused up my attention, and made me more difficult to please, than when I was alone in perfect tranquillity in France. But here I must tell you one of my foibles. I have a great inclination to go down to Scotland this spring to see my friends, and have your advice concerning my *philosophical discoveries* *;

* The term *discovery*, cannot with any propriety be applied to metaphysical speculations. "Il n'y a proprement (says "M. D'Alembert) que trois genres de connoissance où les "decouvertes n'aient pas lieu; *l'Erudition*, parceque les faits "ne se devinent, et ne s'inventent pas; *la Metaphysique*, "parceque les faits se trouvent au dedans de nous-mêmes;

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but cannot overcome a certain shamefacedness I have to appear among you at my years, without having yet a settlement, or so much as attempted any. How happens it, that we philosophers cannot as heartily despise the world, as it despises us? I think in my conscience the contempt were as well founded on our side, as on the other.

"Having a frankt letter, I was resolved to make use of it; and accordingly inclose some *Reasonings concerning Miracles*, which I once thought of publishing with the rest, but which I am afraid will give too much offence, even as the world is disposed at present. There is something in the turn of thought, and a good deal in the turn of expression, which will not perhaps appear so proper, for want of knowing the context:

"*la Théologie*, parceque le dépôt de la Foi est inaltérable, et "qu'il ne sauroit y avoir de Révélation nouvelle." *Mélanges*, *vol.* 4. *p.* 292. But in reality metaphysical doctrines have no other basis than opinion; they are not capable of demonstration, like physical theories, which rest on ascertained facts; and therefore they cannot be the subject of discovery.

but the force of the argument you'll be judge of, as it stands. Tell me your thoughts of it. Is not the style too diffuse? Though, as that was a popular argument, I have spread it out much more than the other parts of the work. I beg of you to shew it to nobody, except to Mr Hamilton, if he pleases; and let me know at your leisure that you have received it, read it, and burnt it.——Your thoughts and mine agree with respect to Dr Butler, and I would be glad to be introduced to him. I am at present castrating my work, that is, cutting off its nobler parts; that is, endeavouring it shall give as little offence as possible, before which, I could not pretend to put it into the Doctor's hands. This is a piece of cowardice, for which I blame myself, though I believe none of my friends will blame me. But I was resolved not to be an enthusiast in philosophy, while I was blaming other enthusiasms. If ever I indulge myself in any, 'twill be when I tell that I am, Dear Sir, yours,

DAVID HUME."

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Dr Butler.

In compliance with the wish expressed in this letter, Mr Home gave his friend a letter of introduction to Dr BUTLER, whose reputation as a metaphysician was then very high. A correspondence with this eminent man had begun on Mr Home's part, from an earnest desire to have some doubts removed, that occurred to him when first turning his mind to the consideration of the Evidences of Natural and Revealed Religion. Those difficulties, which he justly considered as of the most serious importance, he stated in a letter to Dr Butler, with whom he had no previous acquaintance; and earnestly entreated that he might be allowed a personal interview; which, notwithstanding the distance that separated them, he was willing at his own cost alone to accomplish. Dr Butler answered his letter with the utmost politeness, and endeavoured as far as he could, by writing, to satisfy Mr Home's inquiries; but modestly declined a personal meeting, on the score of his own natural diffidence and reserve, his being unaccustomed to oral controversy, and his fear that the cause of truth might thence suffer from the

unskilfulness of its advocate. How amiable this diffidence*! Much as it is to be regretted that these letters have not

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* Mr Boswell was informed by Lord Kames, that he afterwards obtained this interview with Dr Butler, which he so much desired; having called for the Doctor at his house in London, and met with a very polite reception. "We discussed (said Lord Kames) several points in his writings, "and had much good conversation. His manner was extremely decent; and I am convinced that his book (*The Analogy*) was not a *professional* work, but that he sincerely believed all that he had written."—Mr Boswell hereupon remarked, that this gave a complete refutation of an idle and wicked report which he had frequently heard, that his Lordship had seen the Bishop when on his deathbed, and that he had owned to him he had doubts on those subjects. "That "report (said Lord Kames) is not true: I never saw the "Bishop but at that interview in London; though I had "some correspondence with him on the subject of his *Sermons* and his *Analogy*. I was preparing to pay him a visit "at Durham when I heard of his death. But from all that "I know of him, I have not the least reason to question his "sincerity." *Mr Boswell's MSS.*

If any additional refutation were necessary of a malicious calumny which seems not to have had a shadow of foundation, it may be found in a letter to Mrs Carter from Miss Talbot, who attended Bishop Butler during his last illness, and who thus bears an affecting testimony to those sentiments of piety and Christian hope which animated him in the hour of death. "What a loss (says Miss Talbot) does the world "sustain in such a man, who shewed goodness in its most

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been preserved, (possibly from being lent to some of his philosophical friends), there is reason to believe the correspondence was most satisfactory to Mr Home; as he retained through life the greatest regard for Dr Butler, and, though differing from him in some speculative points, entertained the highest respect for his abilities *.

" engaging form, who was a ministering angel upon earth to " all the blessed purposes of a gracious Providence. May " all be everlastingly the better for such examples! And " indeed I am truly cheerful and thankful, though continu- " ally my heart is softened into unfeigned sorrow by the re- " collection of those most delightful hours, which in this " world we must never more enjoy, and of those painful " weeks which closed a life so beneficent, so exemplary. But " it was exemplary to its latest moments. Never had " Christianity a nobler triumph over exquisite pain and long " approaching death than in him. He was not only resign- " ed, but joyful. And though impatient for a better world, " yet submitting with the sweetest patience to a lingering " continuance in this." *Memoirs of the Life of Mrs Eliz. Carter*, 4to, p. 89.

* Dr Butler's talent for philosophical reasoning was first displayed in his *Sermons preached at the Rolls' Chapel*, and published in a single volume in 1726. The scope of argument in these sermons the author himself thus explains: " There are two ways in which the subject of morals may be

The friendly office of introducing Mr David Hume to Dr Butler, was thus warmly acknowledged:

" treated; one begins from inquiring into the abstract rela-
" tions of things; the other from a matter of fact, namely,
" what the particular nature of man is, its several parts, their
" economy or institution; from whence it proceeds to deter-
" mine what course of life it is which is correspondent to this
" whole of nature. In the former method, the conclusion is
" expressed thus: That vice is contrary to the nature and
" reason of things; in the latter, that it is a violation of our
" own nature: they both lead to the same thing, our obliga-
" tions to the practice of virtue; and thus they exceedingly
" strengthen and support each other. The first seems the
" most direct formal proof, and, in some respects, the least
" liable to dispute; the latter is in a peculiar manner adapted
" to satisfy a fair mind, and is more easily applicable to the
" several particular relations and circumstances of life. The
" following discourses proceed chiefly in this latter me-
" thod; the three first wholly. They were intended to ex-
" plain what is meant by the nature of man, when it is said
" that virtue consists in following, and vice in deviating from
" it.—Though there seems no ground to doubt but that the
" generality of mankind have the inward perception expres-
" sed in that manner by the antient moralists; yet it appear-
" ed of use to unfold that inward conviction, and lay it open
" in a more explicit manner than I had seen done." In the year 1736, Dr Butler published his principal work, *The Analogy of Religion, Natural and Revealed, to the Constitution and Course of Nature*, a treatise of which he had laid the

"*To Mr* HENRY HOME, *Advocate.*

"SIR, *London, March* 4. 1737-8.

"I shall not trouble you with any formal compliments or thanks, which would be but

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foundation in his *Sermons*, and which follows out the same train of reasoning. He argues, that probable evidence, or that which admits of degrees of belief, must of necessity be our guide in all matters which do not admit of demonstrative evidence; "for a man is as really bound in prudence to do "what upon the whole appears, according to the best of his "judgment, to be for his happiness, as what he certainly "knows to be so." Reasoning from analogy is reasoning from probability, arising from the resemblance of one thing to another in some qualities or circumstances; and, from the constitution of our minds, we are led to give weight to analogical reasoning when direct evidence is wanting. Origen has sagaciously observed, 'That he who believes the Scrip-"tures to have proceeded from him who is the Author of "Nature, may well expect to find the same sort of difficulties "in it, as are found in the constitution of nature;" And Dr Butler adds, that in the like way of judging, he who denies the Scripture to have been from God, upon account of those difficulties, may for the very same reason deny the world to have been formed by him. On the other hand, if there be an analogy between that system of things, and that dispensation which Revelation informs us of, and the visible system of things and dispensation which we all observe in Nature, a

an ill return for the kindness you have done me in writing in my behalf to one you are so little acquainted with as Dr Butler; and I am afraid, stretching the truth in favour of a friend. I have called upon the Doctor, with a design of delivering him your letter, but find he is at present in the country. I am a little anxious to have the Doctor's opinion. My own I dare not trust to; both because it concerns myself, and because it is so variable, that I know not how to fix it. Sometimes it elevates me above the clouds; at other times, it depresses me

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presumption thence arises, that they have both the same Author and origin. The scope of Dr Butler's work is therefore to shew, that there is such analogy: that both the system of Nature and the scheme of Revelation have the same ends and objects: that the several parts principally objected to in the Moral and Christian dispensation, including its scheme, its publication, and the proof which God has afforded us of its truth, are analogous to what is experienced in the constitution and course of Nature, always supposing an Author and Moral Governor of the universe: that the chief objections urged against the one may with equal justness be urged against the other, where they are found in fact to be inconclusive: and, therefore, that this argument from analogy is of the greatest weight and importance on the side of religion.

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with doubts and fears; so that whatever be my success, I cannot be entirely disappointed. Somebody has told me that you might perhaps be in London this spring. I should esteem this a very lucky event; and notwithstanding all the pleasures of the town, I would certainly engage you to pass some philosophical evenings with me, and either correct my judgment, where you differ from me, or confirm it where we agree. I believe I have some need of the one, as well as the other; and though the propensity to diffidence be an error on the better side, yet 'tis an error, and dangerous, as well as disagreeable. I am, Dear Sir, yours,

DAVID HUME."

"I lodge at present in the Rainbow Coffeehouse, Lancaster Court."

Soon after the publication of the *Treatise of Human Nature*, Mr Hume again writes:

To Mr HOME.

"SIR, *London, Feb.* 13. 1739.

"I thought to have wrote this from a place nearer you than London, but have

been detained here by contrary winds, which have kept all Berwick ships from sailing. 'Tis now a fortnight since my book was published; and besides many other considerations, I thought it would contribute very much to my tranquillity, and might spare me many mortifications, to be in the country, while the success of the work was doubtful. I am afraid 'twill remain so very long. Those who are accustomed to reflect on such abstract subjects, are commonly full of prejudices; and those who are unprejudiced are unacquainted with metaphysical reasonings. My principles are also so remote from all the vulgar sentiments on the subject, that were they to take place, they would produce almost a total alteration in philosophy: and you know, revolutions of this kind are not easily brought about. I am young enough to see what will become of the matter *; but am apprehensive lest the chief reward I shall have for some time will be the pleasure of studying on such impor-

* Mr David Hume was then in the 28th year of his age.

tant subjects, and the approbation of a few judges. Among the rest, you may believe I aspire to your approbation; and next to that, to your free censure and criticism. I shall present you with a copy as soon as I come to Scotland, and hope your curiosity, as well as friendship, will make you take the pains of perusing it *.——

"If you know any body that is a judge, you would do me a sensible pleasure in engaging him to a serious perusal of the book. 'Tis so rare to meet with one that will take pains on a book, that does not come recommended by some great name or authority, that I must confess, I am as fond of meeting with such a one, as if I were sure of his approbation. I am, however, so doubtful in that particular, that I have endeavoured all I could to conceal my name; though I believe I have not been so cautious in this respect as I ought to have been.

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* We shall see with what attention the work here alluded to was perused by Mr Home, and the fruits of that perusal.

CHAP. III.

"I have sent the Bishop of Bristol * a copy; but could not wait on him with your letter after he had arrived at that dignity: At least I thought it would be to no purpose after I begun the printing. You'll excuse the frailty of an author in writing so long a letter about nothing but his own performances. Authors have this privilege in common with lovers, and founded on the same reason, that they are both besotted with a blind fondness of their object. I have been upon my guard against this frailty; but perhaps this has rather turned to my prejudice: The reflection on our caution is apt to give us a more implicit confidence afterwards, when we come to form a judgment. I am, Dear Sir, yours sincerely, DAVID HUME."

It was well for Mr Hume, that his hopes of the success of his first work were not

* Dr Butler was consecrated Bishop of Bristol, 3d December 1738, and was afterwards translated to the see of Durham, 16th October 1750. He died 16th June 1752, in the 60th year of his age.

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To Mr HENRY HOME, *Advocate, at his Lodgings, Edinburgh.*

"*Ninewells, June* 1. 1739.

"DEAR SIR,

"You see I am better than my word, having sent you two papers instead of one.

I have hints for two or three more, which I shall execute at my leisure. I am not much in the humour of such compositions at present, having received news from London of the success of my philosophy, which is but indifferent, if I may judge by the sale of the book, and if I may believe my bookseller. I am now out of humour with myself; but doubt not, in a little time, to be only out of humour with the world, like other unsuccessful authors. After all, I am sensible of my folly, in entertaining any discontent, much more despair, upon this account; since I could not expect any better from such abstract reasoning; nor indeed did I promise myself much better. My fondness for what I imagined new discoveries, made me overlook all common rules of prudence; and having enjoyed the usual satisfaction of projectors, 'tis but just I should meet with their disappointments. However, as 'tis observed with such sort of people, one project generally succeeds another, I doubt not, but in a day or two I shall be as easy as ever, in hopes that truth will prevail at last over the indifference and opposition of the world.

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"You see I might at present subscribe myself your most *humble* servant with great propriety: but notwithstanding, shall presume to call myself your most affectionate friend, as well as humble servant,

DAVID HUME."

Another letter, written just a month after, verifies the promise of the last with regard to the state of the writer's mind, the very slight effect of this first mortification, and the speedy resumption of his literary projects.

To Mr HENRY HOME, *&c.*

"*Ninewells, Sunday, July* 1. 1739.

"MY DEAR SIR,

"I hope you always esteem yourself more obliged to me when I send you papers I do not approve of, than when I send you those I think more tolerable; since there may be a share of vanity in the latter case, which can have no part in the former. I have a strong suspicion against the present packet. One of the papers will be found very cold;

and the other be esteemed somewhat sophistical. However, I communicate them to you; because I may possibly be mistaken. I remember Boileau enumerating the advantages which may be met with in consulting a judicious friend, concerning a man's performances, says, among other things,

Lui seul éclaircira vos doutes ridicules,
De votre esprit tremblant levera les scrupules.

I thank you for your manuscript, which I have scarce had time to look into, being very late at Red-braes Castle last night, and being obliged to dispatch away this in the morning.——I have committed some mistakes in former papers by trusting to my memory. I have met with the story of Diogenes in Cicero told in a better way. I suppose, that instead of the Hydrogenes, I should have said the Androgynes of Plato. I suppose our friends have been lazy the last vacation, that I have not heard of them. I am yours sincerely,

DAVID HUME."

A chasm of more than two years occurs in this correspondence, though there is no reason to believe it to have been discontinued. Yet it might have been less frequent, from Mr Hume's having passed that interval among his friends in Scotland. Alluding to his mortification as an author, he says, "Being naturally of a cheerful and "sanguine temperament, I very soon reco- "vered the blow, and prosecuted with great "ardour my studies in the country. In "1742, I printed at Edinburgh the first "part of my *Essays*: the work was favour- "ably received, and soon made me entire- "ly forget my former disappointment *." We learn from the following letter what were in part those studies which occupied him in the country: and the remarks which it contains will naturally suggest a feeling of regret, that this most acute and learned man had not more frequently turned his attention to subjects of elegant literature, in which he seems to have been peculiarly qualified to instruct and to delight, than to such unprofitable researches as terminated

* Mr David Hume's *Life by Himself.*

only in doubt and uncertainty; as led to no consequence of importance to the conduct of human life; as tended, according to his own melancholy avowal, to separate him as a solitary being from the rest of his species, and to render him an object of enmity, calumny and detraction, while conscious at the same time, that the public approbation was essential to his happiness *.

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* This very striking and memorable avowal is to be found at the conclusion of the First Book of his *Treatise of Human Nature*. "Methinks I am like a man, who having struck "on many shoals, and having narrowly escaped shipwreck "in passing a small frith, has yet the temerity to put out to "sea in the same leaky, weather-beaten vessel, and even car- "ries his ambition so far as to think of compassing the globe "under these disadvantageous circumstances. My memory "of past errors makes me diffident for the future. The "wretched condition, weakness, and disorder of the faculties "I must employ in my inquiries, increase my apprehensions. "And the impossibility of amending or correcting these fa- "culties, reduces me almost to despair, and makes me re- "solve to perish on the barren rock, on which I am at pre- "sent, rather than venture myself upon that boundless ocean "which runs out into immensity. This sudden view of my "danger strikes me with melancholy; and as 'tis usual for "that passion, above all others, to indulge itself, I cannot "forbear feeding my despair with all those desponding re- "flections, which the present subject furnishes me with in "such abundance. I am first affrighted and confounded

To Mr HENRY HOME.

"*June* 13. 1742.

"I agree with you, that Cicero's reasonings in his *Orations* are very often loose,

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"with that forlorn solitude, in which I am placed in my philosophy, and fancy myself some strange uncouth monster, "who, not being able to mingle and unite in society, has "been expelled all human commerce, and left utterly abandoned and disconsolate. Fain would I run into the crowd "for shelter and warmth; but cannot prevail with myself to "mix with such deformity. I call upon others to join me, "in order to make a company apart; but no one will hearken to me. Every one keeps at a distance, and dreads "that storm which beats upon me from every side. I have "exposed myself to the enmity of all metaphysicians, logicians, mathematicians, and even theologians; and can I "wonder at the insults I must suffer? I have declared my "disapprobation of their systems; and can I be surprised if "they should express a hatred of mine, and of my person? "When I look abroad, I foresee on every side, dispute, contradiction, anger, calumny and detraction. When I turn "my eye inward, I find nothing but doubt and ignorance. "All the world conspires to oppose and contradict me; "though such is my weakness, that I feel all my opinions "loosen and fall of themselves, when unsupported by the approbation of others. Every step I take is with hesitation, "and every new reflection makes me dread an error and ab-

and what we should think to be wandering from the point; insomuch, that now-a-days

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"surdity in my reasoning. For, with what confidence can "I venture upon such bold enterprises, when, beside those "numberless infirmities peculiar to myself, I find so many "which are common to human nature? Can I be sure that "in leaving all established opinions, I am following truth; "and by what criterion shall I distinguish her, even if for- "tune should at last guide me on her footsteps? After the "most accurate and exact of my reasonings, I can give no "reason why I should assent to it; and feel nothing but a "*strong propensity* to consider objects strongly in that view, "under which they appear to me."——And a little after: "Experience is a principle which makes us reason from "causes and effects; and 'tis the same principle which con- "vinces us of the continued existence of external objects, "when absent from the senses. But though these two ope- "rations be equally natural and necessary in the human "mind, yet in some circumstances they are directly con- "trary; nor is it possible for us to reason justly and regu- "larly from causes and effects, and at the same time believe "the continued existence of matter. How then shall we ad- "just those principles together? Which of them shall we "prefer? Or in case we prefer neither of them, but suc- "cessively assent to both, as is usual among philosophers, "with what confidence can we afterwards usurp that glo- "rious title, when we thus knowingly embrace a manifest "contradiction? This contradiction would be more excu- "sable, were it compensated by any degree of solidity and "satisfaction in the other parts of our reasoning. But the "case is quite contrary. When we trace up the human un-

a lawyer, who should give himself such liberties, would be in danger of meeting with

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"derstanding to its first principles, we find it to lead us into "such sentiments as seem to turn into ridicule all our past "pains and industry, and to discourage us from future in- "quiries. Nothing is more curiously inquired after by the "mind of man, than the causes of every phenomenon; nor "are we content with knowing the immediate causes, but "push on our inquiries till we arrive at the original and ul- "timate principle. We would not willingly stop before we "are acquainted with that energy in the cause by which it "operates on its effect; and how must we be disappointed, "when we learn that this connection, tie, or energy lies "merely in ourselves, and is nothing but that determination "of the mind which is acquired by custom, and causes us to "make a transition from an object to its usual attendant, "and from the impression of one to the lively idea of the "other? Such a discovery not only cuts off all hope of ever "attaining satisfaction, but even prevents our very wishes; "since it appears, that when we say we desire to know the "ultimate and operating principle, as something which re- "sides in the external object, we either contradict ourselves, "or talk without a meaning.——The intense view of these "manifold contradictions and imperfections in human reason "has so wrought upon me, and heated my brain, that I am "ready to reject all belief and reasoning, and can look upon "no opinion even as more probable or likely than another. "Where am I, or what? From what causes do I derive my "existence, and to what condition shall I return? Whose "favour shall I court, and whose anger must I dread? What "beings surround me? and on whom have I any influence, "or who have any influence on me? I am confounded with

a reprimand from the Judge, or at least of being admonished of the point in question. His Orations against Verres, however, are an exception; though that plunderer was so

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" all these questions, and begin to fancy myself in the most " deplorable condition imaginable, environed with the deepest " darkness, and utterly deprived of the use of every member " and faculty."

And is this the fruit of those boasted philosophical discoveries? this the only end to which the most penetrating intellect could employ its powers? this the final result of his laborious speculations? It is, by the philosopher's own confession. But observe the conclusion, and mark there the disclamation of those very opinions as pure chimeras, which, though he found his reason insufficient to dispel them, (reason thus sophisticated), were put to flight at once by his natural feelings, and the return of common sense. " Most " fortunately, (continues he), it happens, that since Reason is " incapable of dispelling these clouds, Nature herself suffices " to that purpose, and cures me of this philosophical melan- " choly and delirium, either by relaxing this bent of mind, " or by some avocation, and lively impression of my senses, " which obliterate all these chimeras. I dine, I play a game " of back-gammon, I converse, and am merry with my " friends; and when, after three or four hours amusement, " I would return to these speculations, they appear so cold " and strained and ridiculous, that I cannot find in my heart " to enter into them any farther."—*Treatise of Human Nature*, vol. i. p. 457. *et seq.*

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impudent and open in his robberies, that there is the less merit in his conviction and condemnation. However, these orations have all very great merit. The Oration for Milo is commonly esteemed Cicero's masterpiece, and indeed is, in many respects very beautiful; but there are some points in the reasoning of it that surprise me. The true story of the death of Clodius, as we learn from the Roman Historians, was this. It was only a casual rencontre betwixt Milo and him, and the squabble was begun by their servants, as they passed each other on the road. Many of Clodius's servants were killed, the rest dispersed, and himself wounded, and obliged to hide himself in some neighbouring shops; from whence he was dragged out by Milo's orders, and killed in the street. These circumstances must have been largely insisted on by the prosecutors, and must have been proved too, since they have been received as truth by all antiquity. But not a word of them in Cicero, whose oration only labours to prove two points, that Milo did not way-lay Clodius, and that Clodius was a bad citizen, and it was meritorious to kill him. If you read his Ora-

tion, you'll agree with me, I believe, that he has scarce spoke any thing to the question, as it would now be conceived by a court of judicature.

" The Orations for Marcellus and Ligarius, as also that for Archias, are very fine, and chiefly because the subjects do not require or admit of close reasoning. 'Tis worth your while to read the conclusion of the Oration for Plancius, where I think the passions are very well touch'd. There are many noble passages in the Oration for Muræna, though 'tis certain that the prosecutors, (who, however, were Servius, Sulpicius and Cato), must either have said nothing to the purpose, or Cicero has said nothing. There is some of that oration lost.

" 'Twould be a pleasure to you to read and compare the two first Philippics, that you may judge of the manners of those times, compared to modern manners. When Cicero spoke the first Philippic, Antony and he had not broke all measures with each other; but there were still some remains of a very great intimacy and friend-

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ship betwixt them: and besides, Cicero lived in a close correspondence with all the rest of Cæsar's captains; Dolabella had been his son-in-law; Hirtius and Pansa were his pupils; Trebatius was entirely his creature. For this reason, prudence laid him under great restraints at that time in his declamations against Antony; there is great elegance and delicacy in them; and many of the thoughts are very fine, particularly where he mentions his meeting Brutus, who had been obliged to leave Rome: *I was ashamed*, says he, *that I durst return to Rome after Brutus had left it, and that I could be in safety where He could not.* In short, the whole oration is of such a strain, that the Duke of Argyle might have spoke it in the House of Peers against my Lord Orford; and decency would not now allow the greatest enemies to go farther. But this oration is not much admired by the ancients. The *Divine Philippic*, as Juvenal calls it, is the second, where he gives a full loose to his scurrility; and without having any point to gain by it, except vilifying his antagonist, and without supporting any fact by witnesses, (for there was no trial or accusation),

he rakes into all the filth of Antony's character; reproaches him with drunkenness and vomiting, and cowardice, and every sort of debauchery and villany. There is great genius and wit in many passages of this oration; but I think the whole turn of it would not now be generally admired.

"I thank Mrs Home for her intelligence, and have much employ'd my brain to find out the person she means. It cou'd not be the widow: for she toasts always the Duke of Argyle or Lord Stair, and never would name a young man whom she may reasonably enough suppose to be in love with her. I shall therefore flatter myself it was Miss Dalrymple. It is now Exchequer term: She is among the few *very fine ladies* of Mrs Home's acquaintance, whom I have the happiness of knowing: In short, many circumstances, besides my earnest wishes, concur to make me believe it was she who did me that honour. I will persevere in that opinion; unless you think it proper to disabuse me, for fear of my being too much puft up with vanity by such a conceit.

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"I am obliged to you for Vaugelas and the pamphlets. I fancy I have been misinformed with regard to Kincaid. The *Essays* are all sold in London, as I am informed by two letters from English gentlemen of my acquaintance. There is a demand for them; and, as one of them tells me, Innys, the great bookseller in Paul's Churchyard, wonders there is not a new edition, for that he cannot find copies for his customers. I am also told that Dr Butler has every where recommended them, so that I hope they will have some success. They may prove like dung with marl, and bring forward the rest of my philosophy, which is of a more durable, though of a harder and more stubborn nature. You see I can talk to you in your own style. Adieu. Yours, &c.

DAVID HUME."

The estimate which Mr Hume here makes of the comparative merit of his *Political Essays* and his *Metaphysical Speculations*, is one of the strongest examples of the mistaken judgments which authors are apt to form of their own writings. His *Political Dissertations*, published above sixty years

ago, enjoy at this day an extensive and permanent reputation: they abound with the most solid instruction; and have served as the basis of that enlarged system of policy, which connects the welfare of every nation with the prosperity of all its surrounding states. To his *Philosophy*, deemed by him of a more durable nature, we see no reasonable grounds for assigning a more lasting empire, than has been the lot of the once equally celebrated systems of Malebranche, Leibnitz, and Berkeley.

CHAPTER IV.

Mr Home married in 1741.—His mode of life in town.—His occupations in the country.—Dictionary of Decisions.—Mr Home's early political opinions.—Essays on British Antiquities.—On the Feudal Law.—On the Constitution of Parliament.—On Honour, Dignity, and Succession.—On Hereditary and Indefeasible Right.—Correspondence with David Hume.

BOOK I.

Mr Home married in 1741,

Mr Home was married in 1741, to Miss Agatha Drummond, a younger daughter of James Drummond, Esq; of Blair, in the county of Perth. Their union was the result of mutual esteem, and a perfect knowledge of each other's character, founded on a long and intimate acquaintance. Mrs Home was endowed with an excellent understanding, and an enlightened and solid judgment in the conduct of life, with much sweetness of temper and gentleness of manners. With a remarkable diffidence in her

own abilities, she possessed a natural good taste; and though superior to the affectation of shining as a wit, she had an uncommon share of humour, an acute discernment of characters, and was not indisposed in the company of intimate friends to indulge a playful vein of satire on the lighter weaknesses, or ludicrous absurdities that came under her view. But this talent was rarely displayed, and ever under the regulation of good manners, and the better restraint of a humane and benovelent heart. In the management of her household, where it was the more becoming in her to attend to economy, that her husband's turn for hospitality, and her own sense of what was suitable to the rank they occupied in life, rendered it necessary to maintain a handsome and liberal establishment, Mrs Home's conduct was a model of propriety. Abridging every superfluous expence, indulging in none of the frivolous gratifications of vanity, but studious alone of uniting the real comforts of life with that modest measure of external show which the station of a gentleman demands, she kept an elegant but

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simple table, at which the guests of her husband met always with a cheerful welcome. In the earlier period of Mr Home's married life, attention to economy was a necessary duty: and he found in his partner that excellent good sense and discretion, which felt it no sacrifice to conform their mode of living to the just bounds of their income. I have from Mr Home Drummond the following anecdote, which, as he justly observes, is illustrative of the characters both of his father and mother. "Mrs Home, "who had a taste for every thing that is "elegant, was passionately fond of old "china; and soon after her marriage, had "made such frequent purchases in that "way, as to impress her husband with some "little apprehensions of her extravagance. "But how to cure her of this propensity "was the question. After some considera- "tion, he devised an ingenious expedient. "He framed a will, bequeathing to his "spouse the whole china that should be "found in his possession at his death; and "this deed he immediately put into her "own hands. The success of the plot was "complete: the lady was cured from that

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"moment of her passion for old china. "This little pious fraud Mr Home was "wont frequently to mention with some "exultation; but it was not so much the "effect, as the ingenuity of the stratagem, "that touched him. For, as it commonly "happens that we value ourselves most on "those talents we least possess, it was amu-"sing to see a person of his artless charac-"ter pique himself on his *finesse*, though, "in fact, nothing was more foreign to his "nature *."

His mode of life in town.

But with this laudable attention to economy, Mr Home's mode of living was con-

* The observation of Mr Home Drummond on this little anecdote is perfectly just, if by *finesse* we understand that species of selfish artifice which is the main constituent of the character of a worldly politician; for there certainly never existed a character more completely free of that dishonourable ingredient than the person here alluded to: but I differ from the opinion of my respectable friend, in deeming the *ingenuity* of the artifice here mentioned, to be foreign to Mr Home's nature; for it appears to me to be a happy illustration of his father's intimate knowledge of the human mind, and his discernment of the power of the passions to balance and restrain each other's operation; qualities on which he might be allowed to pique himself with good reason.

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sistent with every rational enjoyment of social and polished life. He had accustomed himself from his earliest years to a regular distribution of his time; and, in the hours dedicated to serious occupation, it was no light matter that ever made him depart from his ordinary arrangements. The day was devoted chiefly to professional duties. He had always been in the habit of rising early; in summer between five and six o'clock; in winter, generally two hours before day-break. This time was spent in preparation for the ordinary business of the Court; in reading his briefs, or in dictating to an amanuensis. The forenoon was passed in the Court of Session, which, at that time, commonly rose soon after mid-day; thus allowing an hour or two before dinner for a walk with a friend. In town, he rarely either gave or accepted of invitations to dinner; as the afternoon was required for business and study. If the labours of the day were early accomplished, and time was left for a party at cards before supper, he joined the ladies in the drawing-room, and partook with great satisfaction in a game of whist, which he played well; though not

always with perfect forbearance, if matched with an unskilful partner: yet even these little sallies of temper were amusing, and seasoned with so much good humour, that they rather pleased than offended the person who was their object. At other times, he was not unfrequently seen of an evening at the theatre, the concert, or assembly-room; and, possessing to a wonderful degree the power of discharging his mind of every thing that was not in consonance with his present occupations, he partook with the keenest relish in the amusements of the gay circle which surrounded him. It was delightful to see the man of business and the philosopher mingling not only with complacence, but with ease, in the light and trivial conversation of the *beau monde*, and rivalling in animation and vivacity the sprightliest of the votaries of fashion, whose professed object is pleasure, and the enjoyment of the passing hour. The evening was generally closed by a small domestic party; where a few of his intimate friends, assembled for the most part without invitation, found a plain but elegant little supper; and where, enlivened often by some of Mrs

BOOK II. Home's female acquaintance, the hours were passed in the most rational enjoyment of sensible and spirited conversation, and easy social mirth, till after midnight.—Such was the tenor of Mr Home's life, while engaged in the most extensive business as a barrister; and such, with little variation in the distribution of his time, it continued to be after his promotion to the Bench.

His occupations in the country.

The seasons of vacation were usually spent in the country; and with no other interruption to his hours of study, than his favourite agricultural pursuits, and rural improvements demanded. Inheriting a paternal estate, which, from the indolence of his predecessors, he found in a very waste and unproductive condition, he began early to turn his attention to agriculture as a science: and living in a quarter of the country bordering on England, he had the opportunity of observing the effects of a better system of farming, which he was among the first of the Scottish gentry to emulate in his own practice, and endeavour to bring into general use. In these pursuits he found a pleasing variety of employment, and an use-

ful recreation from his sedentary occupations; and prosecuting with ardour, as was the turn of his mind, every thing in which he engaged, it was his custom to oversee in person the operations of his farm-servants, and to spend every day some hours with them in the fields, in directing, and even aiding their labours. One day a country gentleman of his neighbourhood coming to dine with him at Kames, found him in the fields, hard at work in assisting his men to clear the stones from a new inclosure *. It was after his promotion to the rank of Judge. His neighbour attended him for some time, with labouring steps, and much inward impatience, till summoned by the bell for dinner. "Well, My Lord," said he, "you have truly wrought for your meal; "—and pray let me ask you, how much "you think you will gain by that hard la- "bour at the end of the year?"—"Why "really, my good Sir," replied the other, "I never did calculate the value of my

* Rident vicini glebas et saxa moventem.——Hor. *Epist.* 14.

"labour: but one thing I will venture to "assert, that no man who is capable of "asking that question, will ever deserve "the name of a *farmer*." The anecdote is characteristic of a great proportion of the Scottish country gentlemen at that period; and I fear we must with shame acknowledge, that the same spirit is but too prevalent in our own times among the same class of men. In fact, Mr Home was convinced that our inferiority to our southern neighbours, in this most valuable of all arts, was much less to be attributed to the difference of soil and climate, than to the indolence of the landholders, the obstinate indocility of the peasantry, and the stupid attachment of both classes to antient habits and practices. For the removal of these impediments, he saw that the only remedy must be the successful example of a better system; and this he determined to shew in the management of his own lands, with a resolution and perseverance that did him honour, and which he had the satisfaction to see produce at length a great and general change in the agriculture of Scotland. But on this sub-

ject, I shall have a better opportunity afterwards of enlarging.

It was chiefly during the vacation, and in the uninterrupted leisure he found in the country, that Mr Home was employed in the composition of those various works which he has left to posterity. Of these the most extensive and laborious are what relate to jurisprudence, and particularly the law of his own country, which he constantly regarded as his primary object.

Dictionary of Decisions of the Court of Session.

In 1741, he published, in two volumes folio, *The Decisions of the Court of Session from its institution to the present time, abridged and digested under proper heads, in the form of a Dictionary*; a composition of great labour, the fruit of many years, and a work of the highest utility to the profession of the law in Scotland.

Before this time, the Reports of the judgments of the Supreme Court had not only never been methodized and classified; but the greater part of them being unprinted, were to be found only in a few manuscript

BOOK I. collections, which were neither easily accessible to the practitioner, nor could be perused or consulted without much unpleasant labour. Hence the train of precedents was very imperfectly known either to the practitioners, or to the Judges themselves; and the common law of the country, which is the creature of precedent or usage, was, of course, most uncertain and fluctuating. No undertaking, therefore, could be more beneficial than that which should simply exhibit the whole train of the judgments of the Court, in a regular and connected series, and in an abridged form, without that prolix detail of fact and argument which loads the original Reports. But the *Dictionary of Decisions* has, along with this useful purpose, a still higher aim. The plan of the compilation is scientific, and affords a strong proof of the ingenuity of its author, and his habit of conducting all his researches according to systematic arrangement, and a philosophical reference to general principles. The classification of the Reports in the *Dictionary* is regulated by the *ratio decidendi*, or rule of law on which the judgment rests. Every head or title, therefore, is an illustra-

tion of some legal principle, by a series of adjudged cases regularly methodized; which, by their order and connexion, exhibit a clear analysis of the general doctrine, and reconcile all its apparent anomalies. Thus, the *Dictionary of Decisions* is not only to be valued as a great collection of authorities or precedents drawn from the practice of the Court, and therefore of consummate utility to the barrister and practitioner, in the daily course of business, but is fitted, from the nature of its plan, to furnish instruction in the law as a science. The examination of various cases, which turn upon one common *ratio decidendi*, familiarizes the mind, in all points of doubt, to recur immediately to a principle; and this habit of reference will not only be found of the utmost benefit when any abstruse or intricate question is the subject of discussion; but it tends, from the agreeable and vigorous exercise it affords to the intellectual powers, to give to jurisprudence that dignity as a science which it merits, and to render the study of the laws, instead of a servile drudgery, the manly employment of a philosophic mind.

Yet from the very circumstance of the scientific arrangement of this work, it was to be expected that the order of the cases should not in every instance appear the most natural and obvious to the class of ordinary practitioners, who consult the *Dictionary of Decisions* only as a magazine of precedents, and whose turn of mind is seldom fitted to develope a systematic analysis. Nor, indeed, can it well be denied, that the ingenuity of the plan, while it recommends the work the more to the man of science, and the intelligent student of jurisprudence, does, in some degree, impair its more general utility. But to this it can only be answered, that such were the author's views; the work took its structure from the turn of his own mind; and it was to the latter class of readers that he chose to adapt his labours, in preference to the more numerous order of mere routine practitioners. Such as he chose to make it, the work is of great and general benefit in the profession of the Scottish law. It has tended, more than any other of the writings of our lawyers, to mature the system of our jurisprudence; and has had the inestimable

advantage, in a country where the statute-law lies within a very narrow compass, and is therefore often inapplicable to the diversity of cases, of reducing the practice of the Court to a degree of uniformity which supplies the defect of positive statute, and gives to the common law that just weight which it can derive only from the stability and certainty of its decisions *.

Mr Home's early political opinions.

From the period of the Revolution, which was not, in Scotland, as in England, the fruit of a coalescence, but, on the contrary, of a complete separation of parties, a great proportion of the Scottish gentry had retained a strong attachment to the exiled family; and, from the year 1715 downwards, when an active attempt was made in favour of the Pretender, which proved abortive, rather from accidental circumstances than from the

* A *Supplement*, of two additional volumes, was added to the *Dictionary of Decisions*, by the writer of these Memoirs, to whom the task was committed by Lord KAMES himself, and carried on under his own eye.

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vigour of the existing government, the design of re-establishing James on the throne of his ancestors was secretly cherished, and a train of measures laid for that more formidable effort which was made in 1745.

The principles of Mr Home's family were Jacobitish; and while a young man, it is probable, that from a very natural prejudice, he gave an easy assent to the political opinions which he heard daily inculcated and approved: but a little reflection sufficing to convince him, that the foundation of all regular government, is the free consent of the people governed, he very early embraced the rational persuasion, that it is the duty of every good man to endeavour, both by his example and active influence, to maintain the public tranquillity under a government to which the great majority of a nation is disposed to yield a willing obedience.

Essays on British Antiquities.

During the Rebellion in 1745 and in 1746, the disorders of the country occasioned a suspension of judicial procedure in the northern part of the kingdom; the Court of Session not meeting for a period of eleven

months *. In that interval, Mr Home sought a useful employment for his mind in various researches connected with the history, laws, and ancient usages of his country; and conceiving the general result of his inquiries to be favourable to the important end of reconciling those unhappy differences of opinion, he digested them into a small Treatise, which he published in the year 1747, under the title of *Essays upon several Subjects concerning British Antiquities.* The work consists of five short Dissertations:

* The Court of Session rose, for the autumn vacation, on the 1st of August 1745. On the 8th of that month, accounts arrived at Edinburgh that the Pretender had landed in the Western Highlands a few days before. By act 19th Geo. II. c. 7., the Court of Session, which ought to have met on the 1st of November, was declared to stand adjourned from that day to the 1st of June 1746, on the narrative, that the rebels were in possession of the city of Edinburgh, where the King's signet was kept, and that the Judges and other members of the Court were prevented from doing their duty, by the disorderly state of the country.

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1. On the Introduction of the Feudal Law.
2. On the Constitution of Parliament.
3. On Honour and Dignity.
4. On Succession or Descent.
5. Appendix on the Hereditary and Indefeasible Right of Kings.

These *Essays* are not of equal merit. The first and second contain some curious and important deductions illustrative of the rise and growth of the British Constitution: the third and fourth, though exhibiting a great deal of ingenious reasoning, are built almost entirely on hypothesis; and in the last, though the general train of argument is sound and convincing, the author is sometimes in hazard of pushing his conclusions to an extreme more dangerous than the consequences resulting from the principles combated.

On the Feudal Law.

With regard to the Feudal Law, that singular fabric, whose origin, notwithstanding the elaborate researches of a PASQUIER, a MABLY, and a MONTESQUIEU, will perhaps for ever remain a problem; Mr Home is of

opinion that it was introduced into Scotland, not, as the most of our national antiquaries have supposed, by Malcolm II., but above sixty years afterwards by Malcolm III.; and was therefore probably borrowed from England, where it had been adopted by his cotemporary sovereign William, from the usages of his countrymen the Normans. Mr Home's argument to prove that the *Leges Malcolmi*, in which the feudal institutions are frequently referred to, are the compilation of a later age than that of Malcolm II., is quite convincing: for those laws mention the titles of *Earl* and *Baron*, and specify the offices of *Chancellor*, *Coroner*, and others, which we know with certainty to be of a much later date and posterior institution to the reign of Malcolm II. But the argument has not the same force to prove that the feudal usages were actually introduced by Malcolm III.: for a writer whose opinions on points of this nature are of greater weight than those of any other Scottish antiquary, I mean my Lord Hailes, has put an end to all inference or conclusion drawn from the *Leges Malcolmi*, by proving that

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work to be an entire fabrication, the code of laws of no sovereign whatever, (the style being historical, not statutory), and the whole probably the compilation of some ignorant individual, who had not ability sufficient to adapt his compositions to the manners or the language of the age to which he wished to assign them *. The precise era, therefore, of the introduction of feudalism in Scotland, must remain, after all, a matter of conjecture; and we own, that Mr Home has argued with sufficient probability, that that system was adopted by the Scots from England, soon after its establishment in the latter kingdom by the Conqueror †.

On the Constitution of Parliament.

In the *Essay on the Constitution of Parliament*, the author shews the national council to be the natural growth of the feudal

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* See *Inquiry into the Authenticity of Leges Malcolmi*, by Lord HAILES.

† See *Chalmers's Caledonia*, vol. i. p. 456, 696, 736, where a great deal of light is thrown on this intricate point; as in the same most instructive work, on almost every other subject of Scottish antiquities.

subordination, and its members originally to have been the vassals of the sovereign, bound by their allegiance to attend in the court of their over-lord, to assist him in administering justice, and enforcing good order in the community. He traces the gradual progress of their function, which, from a duty and service often regarded as a burden, became in time an important and envied privilege; and, in the course of this disquisition, he notices many particulars, highly deserving the attention both of the historian and political inquirer: as, for example, the causes which led to the separation of the two Houses in the Parliament of England, and the effects thence resulting, on the constitution of the English Government, as discriminated from that of Scotland, where the division of Lords and Commons into separate deliberative bodies never took place. The author shews very distinctly, that the fabric of the Scottish Parliament gave the King a powerful influence on its enactments, and control over its deliberations; but he omits the just inference which may hence be drawn in favour of the Sovereigns, that

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the wisdom of their laws, and the general equity of their administration prove, that they did not abuse their power.

On Honour and Dignity,—and on Sucsession.

The *Essays on Honour and Dignity, and on Succession*, contain much ingenious reasoning, but are unsatisfying to the mind, from the want of a sufficient basis of historical fact, and from a too frequent recurrence to hypothetical assumptions. The want of authenticated facts must often be felt in all disquisitions on the origin of antient institutions; and the writer is not to be blamed who reasons at times from probabilities, in support of a theory which is founded at least in part on demonstrative proofs: But we cannot easily admit, that a theory from which conclusions are deduced of the greatest importance to the good order of society, should principally rest upon mere conjectures, or seek its chief support from analogical inference. That hypothesis, for example, ought to have a surer foundation than conjecture, from which such conclusions are drawn, as, That the King is not the fountain of honour, and That the power of bestowing titles of dignity, independent

of land or office, is an irregular exercise of the Royal prerogative.—So likewise, we see the importance of settling the rules of succession on some fixed principles of the law of nature; but we cannot acquiesce in the fanciful analogy discovered between the tendency of all bodies to move forward in a straight line, and the process of the mind, in preferring a direct series of heirs in descent, however remote, to the nearer relations in the ascending series.

On Hereditary and Indefeasible Right.

In the last Essay, the author treads on dangerous ground, when he attempts to weaken the foundation of hereditary succession to the Regal office; for the British Constitution, of which he professes a just admiration, rests on that fundamental principle, which was acknowledged as such, and even in express terms confirmed by the Act of Settlement at the Revolution. He is better founded in his attack upon the extravagant doctrine of Divine and Indefeasible Right; and his questions are pertinent and unanswerable, when he asks its blinded supporters, "Where is the necessity for God's ex-"traordinary interposition, by granting his

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"immediate commission to kings, when in "other matters he chooses to govern the "world by second causes and ordinary "means? Why should we suppose that "mankind are deprived of their natural "privilege of choosing their First Magis-"trate, more than of choosing those that "are subordinate? Where is this commis-"sion recorded? Is it given to all chief "rulers, whether they have the name of "King or any other title? Was this com-"mission given to all the Crown-vassals in "France, Dukes, Earls, Barons, who for "many ages possessed a sovereignty within "their own territories? These are puzzling "questions; and it would require an ex-"press revelation to put an end to them."

—But even on these topics, the greatest caution is required in the management of the argument: For the object being to maintain the peace and good order of the community, the hazard in pushing too far the defeat of the principles of passive obedience is, that we counteract that very end, by teaching the subject that it is lawful to resist, whenever he conceives himself aggrie-

ved. *Salus populi, suprema lex* *, is just, as a general maxim: but who is to determine, in doubtful measures of government, where lies the *salus populi*; or how is the fair and unbiassed sense of the nation on the tendency of such measures to be collected? If every individual arrogate to himself that liberty of judgment, and power of acting in consequence, there is an end of all government whatever.——The general doctrines of this Essay were more seasonable in the times when it was written, than in the present day, when the danger chiefly to be apprehended is from the abuse of the opinions here supported, not those which the author has successfully combated.

Correspondence with David Hume.

Mr Home's correspondence with his friend DAVID HUME had been interrupted for a considerable time; but was resumed in 1745, on occasion of a scheme proposed by the friends of that gentleman for obtaining for him the Professorship of Moral Philosophy in the University of Edinburgh, then vacant by the resignation of Doctor (after-

* "The good of the people is paramount to all law."

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wards Sir John) Pringle;—a plan which proved abortive, from the unfavourable impression the public had received of Mr Hume's sceptical opinions, from the publication of the *Treatise on Human Nature*. It is mortifying to remark, how uncertain and precarious were the prospects of this eminent man; when, at the age of thirty-six, he appears to have hesitated between the choice of a civil and of a military life, and was willing to accept of the temporary employment of private secretary to General Sinclair, in an intended expedition against Canada. In a letter to Mr Home from Portsmouth, dated in 1746, he says:

"As to myself, my way of life is agreeable; and though it may not be so profitable, as I am told, yet so large an army as will be under the General's command in America, must certainly render my perquisites very considerable. I have been asked whether I would incline to enter into the service? My answer was, That at my years I could not decently accept of a lower commission than a company. The only prospect of working this point would be, to pro-

cure at first a company in an American regiment, by the choice of the colonies. But this I build not on, nor indeed am I very fond of it.——I like exceedingly your method of explaining personal identity, as being more satisfactory than any thing that had ever occurred to me *. As to the idea of substance, I must own, that as it has no access to the mind by any of our senses or feelings, it has always appeared to me to be nothing but an imaginary centre of union amongst the different and variable qualities that are to be found in every piece of matter. But I shall keep myself in suspense till I hear your opinion. Adieu my dear friend. D. H."

The projected expedition against Canada ended in an incursion on the coast of France. The prospects of the philosopher

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* Mr Home has treated this subject in his *Essays on the Principles of Morality and Natural Religion*; and has successfully shown the error of former philosophers, particularly Mr Locke, in his reasoning on the foundation of our belief of Identity.—*Essays on the Principles of Morality*, 3d edition, p. 197.

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were as uncertain as ever: yet, with surprising equanimity, he seems to have enjoyed the varied scenes in which he was engaged: still comforting himself with the thought, that, under every disappointment of his views of worldly advancement, a never-failing resource remained in the calm pursuits of science and literature. A letter to Mr Home, in 1747, amidst some pleasing expressions of this happy turn of mind, shews, that among other projects, he had, before this time, conceived the design of some historical composition:

"DEAR SIR,

"I am ashamed of being so long in writing to you. If I should plead laziness, you would say I was much alter'd: if multiplicity of business, you would scarce believe me: if forgetfulness of you and our friendship, I should tell a gross untruth. I can therefore plead nothing but idleness, and a gay, pleasurable life, which steals away hour after hour, and day after day; and leaves no time for such occupations as one's sober reason may approve most of.

This is our case, while on shore; and even while on board, as far as one can have much enjoyment in that situation.

"I wrote my brother from the coast of Brittany; giving him some account of our expedition, and of the causes of our disappointment. I suppose he received it after you had left the country; but I doubt not he has informed you of it. We were very near a great success, the taking of L'Orient, perhaps Port Louis, which would have been a prodigious blow to France; and, having an open communication with the sea, might have made a great diversion of their forces, and done great service to the common cause. I suppose you are become a great General, by the misfortune of the seat of war being so long in your neighbourhood. I shall be able when we meet to give you the just cause of our failure.—Our expedition to North America is now at an end; we are recalled to England; the convoy is arrived, and we re-embark in a few days. I have an invitation to go over to Flanders with the General, and an offer of table, tent,

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horses, &c. I must own I have a great curiosity to see a real campaign; but I am deterred by the view of the expence, and am afraid, that living in a camp, without any character, and without any thing to do, would appear ridiculous. Had I any fortune which could give me a prospect of leisure, and opportunity to prosecute my *historical projects*, nothing could be more useful to me; and I should pick up more military knowledge in one campaign, by living in the General's family, and being introduced frequently to the Dukes, than most officers could do after many years service. But to what can all this serve? I am a philosopher, and so, I suppose, must continue.

"I am very uncertain of getting half-pay, from several strange and unexpected accidents, which it would be too tedious to mention; and if I get it not, shall neither be gainer nor loser by the expedition. I believe, if I would have begun the world again, I might have returned an officer, gratis; and am certain might have been

made chaplain to a regiment gratis; but CHAP. IV.
——————* I need say no more. I shall stay a little time in London, to see if any thing new will present itself. If not, I shall return very cheerfully to books, leisure, and solitude, in the country. An elegant table has not spoilt my relish for sobriety; nor gaiety for study: and frequent disappointments have taught me, that nothing need be despaired of, as well as that nothing can be depended on. You give yourself violent airs of wisdom, you'll say, *Odi hominem ignavâ operâ, philosophicâ sententiâ* †. But you will not say so, when you see me again with my Xenophon or Polybius in my hand; which, however, I

* This blank is in the manuscript. The reader will be at no loss to supply it.

† A. Gellius cites this sentence as a verse of Pacuvius: "Versus Pacuvii quem Macedo philosophus, vir bonus, familiaris meus, scribi debere censebat pro foribus omnium templorum:

"Ego odi homines ignavâ operâ et philosophicâ sententiâ."

A. Gell. *Noct. Att.* xiii. 8.

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shall willingly throw aside to be cheerful with you, as usual. My kind compliments to Mrs Home, who, I am sorry to hear, has not yet got entirely the better of her illness. I am, my dear Sir, yours sincerely,

DAVID HUME."

In another letter from Mr Hume, dated the same year, which is chiefly relative to his private affairs, he thus expresses his opinion of the *Essays on British Antiquities*, then recently published: "You have never "spoke to me of the *Essays on British Antiquities*; and therefore I should not in "decency speak of them to you. But as it "would be more indecent to employ a long "letter in talking entirely of myself, I shall "only say, that I read them with great satisfaction; the reasonings are solid, the "conjectures ingenious, and the whole instructive. The style is also very good; "correct and nervous, and very pure; only "a very few Scotticisms, as *conform* for "conformable, which I remarked. You "do me the honour to borrow some principles from a certain book: but I wish

" they be not esteemed too subtile and ab-
" struse."

In the following year (1748), he thus writes to his friend Mr Home, from London, when preparing to set out for the Continent with General Sinclair, whom he attended as Secretary, in his embassy to the Courts of Vienna and Turin:

" DEAR SIR, *London, Feb. 9. 1748.*

" The doubt and ambiguity with which I came hither was soon removed. General Sinclair positively refused to accept of a Secretary from the Ministry; and I go along with him in the same station as before. Every body congratulates me upon the pleasure I am to reap from this jaunt: and really I have little to oppose to this prepossesion, except an inward reluctance to leave my books, and leisure and retreat. However, I am glad to find this passion still so fresh and entire; and am sure, by its means, to pass my latter days happily and cheerfully, whatever fortune may attend me.

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"I leave here two works going on, a new edition of my *Essays*, all of which you have seen, except one, of the *Protestant Succession*, where I treat that subject as coolly and indifferently, as I would the dispute betwixt Cæsar and Pompey. The conclusion shows me a Whig, but a very sceptical one. Some people would frighten me with the consequences that may attend this candour, considering my present station; but I own I cannot apprehend any thing.

"The other work is the *Philosophical Essays*, which you dissuaded me from printing. I wont justify the prudence of this step, any other way than by expressing my indifference about all the consequences that may follow. I will expect to hear from you; as you may from me. Remember me to Mrs Home, and believe me to be yours most sincerely.

DAVID HUME."

"*P. S.*—We set out on Friday next for Harwich."

CHAPTER V.

Mr Home's metaphysical writings.—Essays on Morality and Natural Religion.—Object and general scope of that work.—David Hume's System of Utility as the Foundation of Morals.—His opinions concerning Cause and Effect.—Objections to Mr Home's system.—His frequent reference to Final Causes.—His doctrines keenly attacked.—Illiberal attempts to subject him to public censure.—The subject brought before the General Assembly.—And Presbytery of Edinburgh.—It is finally quashed.—Mr Home retracts some opinions as erroneous.

CHAP. V.

Mr Home's metaphysical writings.

AMIDST all the pressure of Mr Home's professional employment, when now at the head of the bar, he still found leisure for those metaphysical speculations to which his mind was peculiarly turned. In the attentive examination which his regard for their author led him to bestow on the writings of

Essays on Morality and Natural Religion.

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David Hume, he perceived a train of conclusions drawn by that acute metaphysician, which deeply affected the great interests of society, and seemed to shake the foundation of the moral agency of man, and consequently both of his right conduct in the present life, and of his best grounded hopes of futurity. We see from a passage in the foregoing correspondence, that he had endeavoured to dissuade his friend from publishing those *Philosophical Essays*, in which the principal doctrines of the *Treatise on Human Nature* are clothed in a more ornamented dress, and their perusal thus rendered more likely to be generally extended: and as his endeavours had been unsuccessful for the suppression of those opinions, it now became his earnest concern to counteract their pernicious influence, by exposing the error and sophistry of the reasonings on which they are founded. This seems to have been the main scope and purpose of a work which he published in the year 1751, entitled, *Essays on the Principles of Morality and Natural Religion*.

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Object and general scope of that work.

The object of this work, which though in the form of detached disquisitions, has sufficient unity of design, is to prove, that the great laws of morality, which influence the conduct of man as a social being, have their foundation in the human constitution; and are as certain and immutable as those physical laws which regulate the whole system of nature: Hence he argues, that as a just survey of the natural world, and an examination of the moral constitution of man, furnish alike the most pregnant and convincing evidence of order, harmony and beauty, which evince the utmost skill, combined with the most benevolent design, we are thus irresistibly led to the perception of a FIRST CAUSE, unbounded in power, intelligence and goodness.

A work of this kind, involving a connected chain of argument on topics of the most abstruse nature, is no proper subject for analysis or abstract. Yet, it is not difficult to unfold in a few words the leading train of thought which runs through these Essays,

BOOK I. and indeed through the whole of Mr Home's philosophical writings.

It appeared to him that the great error of philosophers lies in the passion for simplifying the objects of their research, and attempting to account for the whole fabric of the human mind, and all the motives of conduct in man, by recurring to one or a few general laws, to which they endeavour to reduce all the phenomena of our moral nature. Thus, the principles of Self-love, of Universal Benevolence, of Sympathy, of Utility, of Consonance to the Divine Will, have, all in their turn, been assigned by ingenious men as the sole foundation of morality; and elaborate works have been composed to prove the universal and exclusive influence of each of those principles in the regulation of human conduct. It is the purpose of the author of these Essays to demonstrate the error and fallacy of all such narrow schemes; to shew that man, considered in a moral view, is a complicated being, actuated by various passions and affections; and whose conduct is regulated, not by one, or even a few, but by all of the

principles before enumerated, and others, to the operation of which the authors of those schemes have not attended: that his actions are most frequently the combined result of opposite springs, tempering and restraining each other's power; and that the moral feeling is a separate principle, of which it is the function, to judge with unerring rectitude of all those motives to action, and direct the conduct of man to one great and beautiful end, the utmost happiness of his nature.

D. Hume system of utility as the foundation of morals.

Amidst those simplifying and exclusive systems, above enumerated, the theory of David Hume, which assigns Utility as the chief foundation of morals, is more peculiarly the object of examination in this work; as that which not only has been supported with more ingenuity than any other, but which appears to involve the most pernicious consequences; since it seems to annihilate all real distinction of right and wrong in human actions, and to make the preference depend on the fluctuating opinions of men with respect to the general good.

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Thus, for example, that most essential of all our moral feelings, and which has generally been assigned the first rank among the principles of our nature, the sentiment of Justice, is by that author regarded as not even natural to man, or founded on any immutable decisions of the moral sense; but is held to be merely the result of a tacit agreement for the better regulation of human society, and founded entirely on the basis of public interest, which requires its observance, in order to give security to property. To refute this opinion, Mr Home shews that it rests on the false assumption, that in a state of nature there is no idea of property, and therefore, according to the philosopher's argument, no room for the feeling of justice: but there being no state in which men are assembled together, where there is not an acknowledged relation between every individual and the fruits of his labour and skill, the idea of property is coeval with society, and its violation is universally attended with a feeling of breach of duty, which is the sentiment of *justice*.

CHAP. V.

His opinions concerning Cause and Effect.

But that doctrine of David Hume which appeared to the author of the *Essays on Morality*, of all others the most dangerous, is that which questions the reality of the connexion between cause and effect, and which consequently tends to invalidate every argument for the existence of God, drawn from the works of Nature, as the effects of a designing cause. This doctrine Mr Home has examined with the attention it deserved; and has brought the question to the only termination it is perhaps capable of receiving. He has shown, that although the connexion betwixt cause and effect is not demonstrable by reasoning or strict argument, we are nevertheless equally assured of its reality; of which we possess a conviction similar to that we have of our own existence, and the existence of the material world; neither of which facts rests upon any other evidence than that of intuitive perception, creating a belief that is irresistible, constant and universal. This belief, independent of demonstration, the author ascribes to an internal sense, or principle of our constitution, which he asserts to be more authoritative in operating con-

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viction than the strictest demonstration: we spurn at all idea of questioning its decisions; we admit them at once as self-evident propositions. That our belief of the existence of a Deity should rest ultimately on this internal sense, is therefore, according to his notion, to assign to it the surest of all foundations. We are not left to gather our knowledge of this important proposition from a chain of arguments, or any lengthened process of logical reasoning, which would necessarily preclude the conviction of a great proportion of mankind: The Deity has displayed himself to all men, the ignorant as well as the learned. As we have an intuitive perception of the connexion of cause and effect; so we have nearly the same evidence for the existence of a Deity, that we have for our own existence.

Objections to Mr Home's system.

But although the author of these Essays has successfully shewn, that the passion for simplification has led other philosophers to found their theories of morals on too narrow a basis, it has been objected, with some appearance of reason, that he himself has er-

red on the other hand, in multiplying unnecessarily the motives of conduct, and in assigning to separate and distinct original principles of our nature, many of those moral phenomena, which a stricter analysis, and more profound investigation, has shewn to be reducible to one and the same general law; and that thus the progress of science, whose aim is to ascend from the apparent variety of phenomena to primary and ultimate facts, has been retarded, instead of being advanced, by such inquiries. It may, however, be observed, that this objection is truly founded on a *petitio principii*; as it takes for granted the very thing to be proved, namely, that there are principles of a more general and ultimate nature, than those to which Mr Home has attributed the various modifications of human conduct: a fact which those who subscribe to his philosophy will not admit, and which they maintain he has successfully disproved.

Moreover, there seems to be no just ground for assuming it as an axiom, That any science is more advanced by tracing the whole of its doctrines to a single principle,

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or to a very few, than by referring them to a greater number; provided we attain to an equal certainty of their true foundation. It is truth alone, and not the simplification of the objects of our knowledge, that ought to be the end of our researches. The science of anatomy is not less the object of rational and successful study, that the structure of the human body, and the exercise of the animal functions, depend not on one or a few principles of motion, or properties of matter, but on many combined powers, and on the operation of various physical laws.

His frequent reference to Final Causes.

A remarkable feature of Mr Home's philosophy, and conspicuous in most of the works which he composed, is the constant reference to *Final Causes*; and he has on this account shared more liberally than most other writers, in the censure which it has become fashionable to bestow on that mode of argument *. With respect to the work

* On this interesting topic, the argument from Final Causes, it might be considered an unseasonable interruption to enlarge further in this place: but as that argument was particularly cherished by Mr Home, and as the subject is, in

of which we now treat, it must certainly be allowed, that if we are at all entitled to infer a benevolent design in the fabric of the universe, from investigating the various means employed to accomplish useful ends, there does not occur a more convincing evidence of that design in any of the works of Nature, than in the moral structure of man, whether we consider the various faculties and powers of the mind, or the complicated system of the passions and affections. On this great argument of the Divine Wisdom and Goodness, Mr Home has enlarged with a becoming earnestness, and displayed in many passages of this work a warm and energetic elocution; which is the more impressive, that he has but rarely indulged himself in that strain of writing *.

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itself, of the utmost importance, I trust I shall not be blamed for the short discussion which the reader will find in NO. III. of the Appendix.

* I have heard it asserted, that the prayer with which the Author concludes his *Essays on Morality and Natural Religion*, was the composition of his friend Dr BLAIR, the ingenious author of *Lectures on Rhetoric*, and whose

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His doctrines keenly attacked.

The *Essays on Morality and Natural Religion*, were fitted to excite the public attention, from the importance of their topics, and the ingenuity displayed in treating them; but the author certainly could not have foreseen, that a work, professing to fix the principles of morals on an immutable basis, to enforce the proofs of the existence and attributes of the Deity, and to combat the doctrines of the sceptical philosophy, and expose its pernicious tendency, was destined to draw upon him the reproach of scepticism and impiety. Yet such was the effect of its perusal on the minds of many well-meaning men, who, from the force of early prejudice, looked with a jealous eye on all freedom of inquiry, and were taught to brand with the name of heterodoxy every deviation from certain canons of opinion to which they had subjected their reason *.

Sermons are a model of pulpit elocution; but no sufficient authority was assigned for this report, nor does the composition in question bear any intrinsic characters of a different pen from that of the author of the Essays.

* The reader will find a remarkable proof of this, in the letter from a most respectable clergyman of the Established Church, Dr JOHN MACFARLAN, author of *Inquiries concerning the State of the Poor*, &c. at NO. IV. of the Appendix to vol. i.

Mr Home had treated at considerable length in these Essays the question of *Free Will*; and aware of the insuperable difficulty which attends the unqualified adherence to either of the opposite opinions of *Liberty* and *Necessity*, had proposed a sort of conciliatory medium, which he conceived to furnish a solution of the contradictory phenomena. This is, That, according to the truth of things, the moral world and the physical are both regulated by fixed laws; and, as man acts from motives over which he has no control, he is in the strictest sense impelled by an unalterable necessity: yet this law of his conduct being concealed from him, he acts with the conviction of being a free agent; and as his whole conduct is regulated by this conviction, he is thus equally capable of virtue and vice, and equally an accountable being, as if his will were truly free *.

* From Mr Home's earnest desire of reconciling his belief in the scheme of necessity with the moral agency of man, he was led to correspond with his friend Dr Reid on that subject. The reader will find a letter at NO. V. of the Appendix, which, while it distinctly states the opposite opinions of

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These notions, which contain a mixture of truth and error, were attacked with great asperity by various writers. The usual argument was urged, that by maintaining a fixed necessity, both moral and physical, the author denied the reality of the moral agency of man, and annihilated all true and substantial distinction between vice and virtue; while it was asserted, that his notion of man's being endowed with a fallacious sense of freedom of will, was a scheme unworthy of the Divine Nature; and which in truth could not answer the end proposed; as it would still be inconsistent with the justice of God, to hold his creatures accountable, though they believed themselves voluntary agents, if in reality their conduct were regulated by laws which they had no power to counteract.

Illiberal attempts to subject him to public censure.

It might have been expected, that a question confessedly of the most abstruse nature

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both, on this important question, affords an excellent specimen of that union of logical precision with simplicity of language, which characterizes all the writings of that eminent metaphysician.

and difficulty of solution, and which accordingly has been abandoned as inexplicable, by men of the first rank in intellectual ability, should have been agitated with that complacent forbearance for difference of opinion, which a common feeling of the weakness of the human understanding is fitted to inspire. And among those who judged the opinions contained in the work of which we now treat to be deserving of a strict examination, it is with pleasure we remark, that the author of *A Delineation of the Nature and Obligation of Morality* *,

* Mr James Balfour of Pilrig, Advocate, and Professor of Moral Philosophy in the University of Edinburgh,—an ingenious, modest, and worthy man, who spent a long life in the practice of those virtues which it was the object of his writings to inculcate. He was elected to the Professorship of Morals in 1754, on the death of Mr Cleghorn, who, in 1745, had obtained that appointment for which Mr David Hume had offered himself a candidate. Mr Balfour was the author likewise of *Philosophical Essays*, printed in 1768, and a small volume, entitled, *Philosophical Dissertations*, printed in 1772. The principal object of these works, is an examination of the doctrines contained in David Hume's *Essay on Human Nature*, and his *Inquiry concerning the Principles of Morals*.

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(printed at Edinburgh in 1752), has afforded an example of a candid, liberal, and truly philosophic spirit of inquiry. But, unbecoming as it must undoubtedly be considered, it has generally been on questions of this nature, that the bitterest rancour of controversy has prevailed. Among Mr Home's opponents were some persons of so intolerant a spirit, that nothing less could satisfy their zeal, than the interference of ecclesiastical authority, to repress opinions which they conceived to be contrary to the canons of the Established Church, and subversive even of the fundamental principles of religion. Of these the most distinguished was a clergyman of the name of *Anderson*, who, in a volume entitled, *An Estimate of Religion* *, attempted a refutation of Mr

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Perhaps a stronger testimony to the merits of Mr Balfour cannot be given than that of Mr Hume himself, which the reader will find at NO. VI. of the Appendix.

* *An Estimate of the Profit and Loss of Religion, personally and publicly stated: illustrated with references to Essays on Morality and Natural Religion*, Edinburgh, 1753. Its author, the Reverend George Anderson, had been an army chaplain; and in his latter years was chaplain to Watson's

Home's opinions, in a strain of coarse and vulgar ridicule, and with a petulance and scurrility which disgraced the cause he endeavoured to support. This publication was followed by another, from a very different pen, and in a much more liberal strain of composition, entitled, *An Analysis of the Moral and Religious Sentiments contained in the writings of Sopho*, and David Hume, Esq.; addressed to the consideration of the General Assembly of the Church of Scotland*, (1755).

The alarm thus sounded, and a conflict of a very unpleasant nature being apprehend-

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Hospital, Edinburgh. He was a man of a bold spirit and irascible temperament; of considerable learning and vigour of mind, but deficient in that acuteness of talents which is fitted for metaphysical controversy. Besides the work mentioned in the text, he wrote some tracts against the Stage, and *a Remonstrance against Lord Viscount Bolingbroke's Philosophical Religion*, Edinburgh, 1756.

* The name by which Mr Anderson had chosen to distinguish Mr Home in his *Estimate*.

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ed between the Moderate and the High-Church Party, in the Supreme Ecclesiastical Judicature, which was then about to hold its annual meeting, Mr Anderson's publications, and those of his partizans, attracted a degree of notice which otherwise they would not have shared. The latter of the writings above mentioned, (and which alone seemed deserving of notice), was answered with temperate but forcible animadversion, in a pamphlet, entitled, *Observations on the Analysis*, &c., which was generally attributed to the celebrated Dr Hugh Blair, who is believed likewise to have lent his aid in the composition of a formal reply made by Mr Home himself, under the title of *Objections against the Essays on Morality and Natural Religion examined*, (Edin. 1756 *). A motion, however, was made in the Committee for Overtures, of the General Assembly, that that body should take under their consideration, "How far it was proper for them

* The substance of this pamphlet was afterwards engrossed by Mr Home in the third edition of the *Essays on Morality*, &c.

"to call before them, and censure the au-
"thors of infidel books." This motion occasioned a very warm debate in the committee; but was finally thrown out, by a vote which negatived the transmission of the overture to the Assembly *.

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* Although the object of this motion was understood to be a general censure, which should comprehend not only the philosophical writings of Mr David Hume, but the doctrines of the *Essays on Morality and Natural Religion*, it is supposed that a motive of decorum felt by the members of Assembly, the respect due to the station which the author of the latter work now filled, that of a Judge of the Supreme Court, was the reason that the former of these writers alone was mentioned by name in the overture debated in the committee, which bore in substance, that "The General Assembly, "judging it their duty to do all in their power to check the "growth and progress of infidelity; and considering, that as "infidel writings have begun of late years to be published in "this nation, so there is one person, styling himself *David "Hume, Esq;* who hath arrived at such a degree of bold-"ness, as publicly to avow himself the author of books con-"taining the most rude and open attacks upon the glorious "Gospel of Christ, and principles evidently subversive even "of natural religion, and the foundations of morality, if not "establishing direct atheism: Therefore the Assembly ap-"point the following persons ——————————— "as a committee, to inquire into the writings of this author, "to call him before them, and prepare the matter for the "next General Assembly."

BOOK I.

And Presbytery of Edinburgh.

It is finally quashed.

The zeal of Mr Anderson was not checked by this unsuccessful experiment, but vented itself in a new endeavour to rouse the spirit of intolerance. He gave in a *Petition and Complaint* to the *Presbytery of Edinburgh*, in his own name, and in name of all who chose to adhere to him, against the printer and publishers of the *Essays on the Principles of Morality and Natural Re-*

This motion was the subject of a very keen debate for two days in the committee. The argument which chiefly weighed for its rejection was, the danger of extending the influence of those very opinions which it was its object to repress; by exciting the public curiosity for the perusal of those writings, rendering them the subject of general discussion in conversation, and encouraging the publication of defences, explanations and commentaries, which would bring those topics to the level of common understandings, which at present, from the abstract and metaphysical garb in which they were clothed, were suited to the understanding only of a few philosophers. In conclusion, an opposite resolution was moved, "That although all the members have a just abhorrence of "any principles tending to infidelity, or to the prejudice of "our holy religion; yet, on account of certain circumstances "in this case, they drop the overture, because it would not, "in their judgment, serve the purpose of edification." The question being put, Transmit the overture to the Assembly, or Not? it passed in the negative, by a majority of fifty to seventeen votes.

*ligion**, requiring that the Presbytery should summon them to appear before them, and declare the name of the author of that work, in order that he might be censured, "according to the law of the Gospel, and the "practice of this and all other well-governed Churches." The persons complained against appeared by their counsel, and gave in formal defences; to which the petitioner Mr Anderson obtained leave to reply; but he died before the next meeting of the Presbytery. The defendants, however, waving all objection that might be pleaded from the want of a prosecutor, consented to the Court giving judgment on the merits of the case; which, after undergoing a similar discussion to that which had taken place before the Committee of Assembly, terminated by a similar resolution rejecting the complaint.

Mr Home retracts some opinions as erroneous.

In the pamphlet before mentioned, entitled, *Objections against the Essays on Morality and Natural Religion examined*, Mr Home entered at large into the defence of

* Messrs Fleming, printer, and Kincaid and Donaldson, booksellers in Edinburgh.

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his opinions on the subject of Liberty and Necessity; and was at pains to shew, that, so far from meriting the imputation of maintaining heterodox tenets, his doctrine with respect to the immutable necessity of human actions was strictly consonant to that of the first Reformers, and was warranted by the concurring sentiments of the most eminent of the Calvinistic Divines *. It is presumable, however, that he had all along entertained considerable doubt respecting that part of his doctrine, which attributed the sense of freedom of action to a delusion of the mind; and on carefully reviewing the subject, he found reason to alter that opinion, which had afforded the chief handle of censure to his antagonists, and candidly to acknowledge his error, in a subsequent edition of his work †. It is not the province

* Calvin, Turretine, Pictet, Edwards, &c.

† "I must acknowledge it," (says Mr Home), "to have "been once my opinion, That there is in man a sense of be- "ing able to act against motives, or against our inclination "and choice, commonly termed *liberty of indifference*. I "was carried along in the current of popular opinion; and "could not dream but that this sense really existed, when I

of the biographer to engage in a formal examination of all the doctrines of his author: nor, in this particular instance, do I feel my-

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" found it vouched by so many grave writers. I had at the " same time the clearest conviction, that man is a necessary " agent; and therefore justly concluded, that this sense must " be delusive. I yielded to another popular opinion, That " not only praise and blame, merit and demerit, as attribu- " ted to human actions, but also contrition and remorse, are " inconsistent with necessity, and must be founded on the " same delusive sense of liberty of indifference. From these " premises, I was led, though reluctantly, to admit, that " some of our moral feelings and emotions must be founded " on a delusion. I was sensible of the odium of a doctrine " that rests virtue in any measure upon such a foundation; " but so firm is my reliance on Divine Wisdom in the for- " mation of man, that I was not apprehensive of harm in ad- " hering to truth, however unpalatable it might be in some " instances. Before a second edition was called for, I dis- " covered fortunately that the feelings and emotions of the " moral sense are perfectly consistent with moral necessity; " and I gladly laid hold of that opportunity to acknowledge " my error. Having so far rescued the moral system from " this pretended delusive sense, I was strongly inclined to " think, that we had no notion of being able to act against " motives; and in the second edition I ventured to say so. " But upon reviewing the subject for the present edition, I " clearly saw that we really have a notion of being able to " act against motives; which renewed my perplexity; till it " occurred to me, that that notion is suggested by the irre- " gular influence of passion, and that we never have it in our

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self called upon to offer any opinion, whether the new solution which Mr Home has given in the later editions of the Essays, be more free from objection, or better fitted to remove the difficulties attending this most intricate of questions, than the scheme which he at first proposed. The subject itself, we have the best grounds for believing, to be above the reach of the human understand-

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" cool moments; consequently that it is not a delusion of na-
" ture, but of passion only. Candour I shall always esteem
" essential in addressing the public, no less than in private
" dealings; and now I am happy in thinking, that morality
" rests on a foundation that has no delusion in it.——In
" the second edition, however, there is another error that I
" was not able to disentangle myself from. In the *Essay of*
" *Liberty and Necessity*, our notions of *chance* and *contin-*
" *gency* are held to be delusive; and consequently that so
" far we are led by our nature to deviate from truth. It is
" a harsh doctrine, that we should be so led astray in any in-
" stance. As that doctrine never sat easy upon me, I dis-
" covered it also to be erroneous; and the error is corrected
" in the present edition, where I hope it is made clearly out,
" that the notion we have of chance and contingency, is en-
" tirely conformable to the necessary chain of causes and ef-
" fects. And now, rejoice with me, my good reader, in be-
" ing at last relieved from so many distressing errors." *Pre-*
face to the third edition of *Essays on the Principles of Mo-*
rality and Natural Religion, &c. (Edinburgh, 1779).

ing: (perhaps purposely intended by our Creator to impress man with a just sense of the limitation of the powers of his mind): and instead of straining our faculties in a vain endeavour to comprehend, explain and reconcile its contradictory phenomena, it were better at once to acquiesce in that conclusion which one of the most subtile of metaphysicians has himself drawn, after a full statement of all that with certainty could be affirmed on the question of Liberty and Necessity:—"These are mysteries which mere "natural and unassisted reason is very un- "fit to handle; and whatever system she "embraces, she must find herself involved "in inextricable difficulties, and even con- "tradictions, at every step which she takes "with regard to such subjects. To recon- "cile the indifference and contingency of "human actions with prescience, or to de- "fend absolute decrees, and yet free the "Deity from being the author of sin, has "been found hitherto to exceed all the "power of philosophy. Happy, if she be "thence sensible of her temerity, when she "pries into these sublime mysteries; and "leaving a scene so full of obscurities and

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" perplexities, return, with suitable modes-
" ty, to her true and proper province, the
" examination of common life; where she
" will find difficulties enow to employ her
" inquiries, without launching into so bound-
" less an ocean of doubt, uncertainty and
" contradiction * !"

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* DAVID HUME's Essay on Liberty and Necessity.—*Essays and Treatises on several Subjects*, vol. ii.

MEMOIRS

OF

LORD KAMES.

BOOK II.

CHAPTER I.

Mr Home appointed a Judge.—His character in that capacity.—His patronage of literary merit.—State of Letters in Scotland at this period.—Colin Maclaurin.—Dr Francis Hutcheson.—Dr William Leechman.—First writers who cultivated Style.—Blackwell.—David Hume.—Dr Robertson.—Literary Societies.—The Rankenian Club—The Select Society.—Its influence in promoting the literary spirit.—The Poker Club.—The Philosophical Society.—Lord Kames's Essays on the Laws of Motion.—His friendship with Adam Smith.—Dr Robert Watson.—Dr Hugh Blair.—Professor John Millar.

CHAP. I.
Mr Home appointed a Judge.

In February 1752, Mr Home was appointed one of the Judges of the Court of Session, and took his seat on the Bench on the 6th of that month, by the title of Lord Kames. This promotion was attended with

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the general satisfaction of his country; as he stood high in the public esteem, both on the score of his abilities and knowledge of the laws, and his integrity and moral virtues *.

His character in that capacity.

As a judge, his opinions and decrees were dictated by an acute understanding, an ardent feeling of justice, and a perfect acquaintance with the jurisprudence of his country, which, notwithstanding the variety of pursuits in which his comprehensive mind had alternately found exercise, had always been his principal study, and the favourite object of his researches.

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* Lord DESKFORD (fifth Earl of FINDLATER) to Lord KAMES, 11*th February* 1752: "I have several letters saying, "that the country is greatly obliged to the Ministry for giving "them so good a Judge. It has been remarked, that, without "intervals of darkness, we should not be sensible of the bene- "fit of light; and that, were it not for the bad weather with "which we are frequently visited, we should not have so "sensible a pleasure in the serenity of a fine day. If Ad- "ministration were always to do what they ought, people "would say they only do their duty; but, like sagacious po- "liticians, they often do wrong, to make us receive it as a "favour when they sometimes do right."

It might very naturally have been supposed, that the metaphysical bent of his understanding would have tinctured his judicial opinions, with that refinement of argument, and subtilty of discrimination, which are the usual attendants of such a habit of thinking: And perhaps, on a few occasions, where the nature of the subject strongly prompted to that species of reasoning and investigation, he may have been known to indulge a favourite propensity. But the general mode of his judicial speaking was very different. He rarely entered into any elaborate argument in support of his opinions: it was enough that he had formed them with deliberation, and that they were the result of a conscientious persuasion of their being founded on justice and on a fair interpretation of the laws. Diffident of his own judgment, (as the wisest men are ever observed to be, as well from their frequent experience of the limited powers of the mind, as from the various bearings and relations under which they are able to view the subject of inquiry), he never was desirous to lead or bias the opinions of his brethren;

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but was satisfied with announcing his own with a clear and energetic brevity of expression; confining himself to a simple exposition of the principle, where the case turned on a point of law, or the sum of the proof, where it depended on the weighing of evidence. It arose from the same propriety of feeling, that when his own decrees were the subject of review, (as is the form of the Court of Session), he never endeavoured to defend them by argument, nor strove, like a pleader, to win over the judgment of the Court; but barely expounded the *ratio* of his decision. If the prevailing opinion of his brethren, whose judgment he respected, was contrary to his own, he presumed it right, and was satisfied that justice was done, though by the correction of his errors.

The state of the Bench, during the greater part of the time in which he occupied a seat in the Court of Session, was favourable to the exertion of superior abilities. It was no ordinary mental energy that could distinguish itself in the daily comparison with such men as PRINGLE OF ALEMOOR, FERGUS-

SON OF PITFOUR, SIR THOMAS MILLER OF GLENLEE, LOCKHART OF COVINGTON, MACQUEEN OF BRAXFIELD, and THE YOUNGER PRESIDENT DUNDAS.

The judgments of Lord KAMES, (for it was by that title he was henceforth known), had, deservedly, the greatest weight with the Court, on all questions of recondite jurisprudence; and on these he willingly exerted all the powers of his mind. The new lights which in his writings he has thrown on many of the most intricate subjects of the law, and the train of reasoning which appears in some of the most ingenious of those Essays, which he published under the title of *Law Tracts*, and *Elucidations on the Law of Scotland*, were originally displayed, and briefly unfolded in his speeches from the Bench, on some important causes, which led to those discussions. But questions of this nature do not frequently occur; and in cases of trivial importance, which involve no consequence to the law of the country, or the material rights of the subject, he seldom thought it necessary to detail his rea-

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sons of judgment. It was his opinion, that in such cases, promptitude of decision is essential to justice; and that, where the facts are substantiated, and the law is clear, it is the duty of the Judge, simply to pronounce his decree.—Strongly impressed with this persuasion, it was observed, that he sometimes manifested a visible impatience, when, on questions of this nature, he saw a propensity in any of his brethren to waste the time in superfluous reasonings, and that species of wavering debate which, while it retards the business of the Court, is apt to diminish its respect and dignity in the minds of the auditory *.

He had a just regard for the laws of his country, which, in as much as they are founded on sound and rational principles, it was his earnest endeavour to preserve inviolate, and to strengthen, by a reverential adherence to their enactments; as being fully aware, that the certainty of the law is

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* *Biographical Account of the Lord President Dundas*, in *Transactions of the Royal Society of Edinburgh*, vol. ii.

the best security both against private oppression and public disorder *. But he wisely distinguished between the *certainty* of law, (as meaning the precision of its precepts and strictness of its execution), and its *immutability*; or the resistance to that gradual improvement which it is fitted to receive, like every other science, from time and an enlightened experience. More profoundly conversant than most men in the science of General Jurisprudence, he was sensible that the Law of Scotland was in many of its branches in a state of great imperfection; that some of its doctrines were utterly anomalous and irreconcilable to principle; and that others, which originally had their foundation in expediency, were, in the

* "Certainty," says Lord Bacon, "is so essential to law, "that a law without it, cannot be just. For *if the trumpet* "*gives an uncertain sound, who shall prepare himself to the* "*battle?* So if the law has an uncertain sense, who shall "obey it? A law, therefore, ought to give warning before "it strikes: and it is a just maxim, That the best law leaves "least to the breast of the judge; which is effected by cer-"tainty." *De Augment. Scient.—Idæa Just. Univ.* tit. i, aphor. 8.

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lapse of time, which alters both the political relations and the habits of mankind, become, from that change of circumstances, both inexpedient and contrary to material justice. Of these the rigorous observance, from a blind veneration of antient practice, appeared to Lord Kames to be a foolish and blameable sacrifice of reason to prejudice *. Law he considered only as the minister of justice, and entitled to regard no otherwise than as subservient to that great end. Where, therefore, in the application of the law to any particular case, it is found, that, by a rigid observance of the letter, we violate the spirit, and do iniquity instead of justice, there he justly regarded it as the bounden duty of a court, possessing the power of attempering law by equity,

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* "Let laws, if they have slept long, or are grown unsuitable to the present times, be by prudent judges restrained in the execution.——Judges ought, above all others, to remember the conclusion of the *Roman Twelve Tables, Salus populi suprema lex;* and that laws, unless in order to that end, are captious things, and oracles ill inspired.—— Let not judges be so ignorant of their own right and prerogative, as to think themselves denied a principal part of their office, viz. a sound and prudent use and interpretation of the law."—BACON'S *Moral Essays*, Essay vii.

to take the case out of the strict letter; proceeding on this wise principle, that that law must be inapplicable, which in any instance would sanctify the commission of injustice. Law, which has for its province the regulation of human society, must accommodate itself to the varying condition of that society which it governs. It is, therefore, from its very nature, mutable, and susceptible of perpetual improvement. But Justice, which is the object of law, is fixed, immutable and certain: The one imperfect, as the invention of man; the other perfect, as the ordinance and attribute of his Maker. A good judge, like an able pilot, will use the former as his compass; but aware of its occasional error and variation, he will look to the latter as his polar star.

To the Bar Lord Kames uniformly conducted himself with a proper courtesy and respect. The counsel who pleaded before him were always heard with attention, while they confined themselves to the proper limits of their cause. He listened with patience and a becoming regard to the argu-

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ments of the senior counsel, from whom he expected light and information; and with a kind indulgence to those of the younger barristers, whose diffidence he loved to animate by the urbanity of his demeanour; and whose early indications of ability he delighted to foster: a most engaging and amiable feature of his mind, which was not only conspicuous in his character as a judge, but attended him in every department of his private and public life. In him, merit of every kind, in whatever rank or condition it appeared, and more particularly if depressed by situation, or checked by diffidence and humility, was sure to find its patron and protector.

In these material requisites of a judge, the character of Lord Kames was great and exemplary. If we acknowledge that in some subordinate qualities he fell short of that general eminence, it is but to say, that he partook, like other men, of the imperfections of our common nature.

The quickness of his apprehension cooperating with the strength of his moral feel-

ings, where at first view he conceived the justice or equity of the cause to lie strongly on one side, was sometimes observed to dispose him to form too hasty a judgment of its merits. But this prepossession was easily overcome. His mind was open to conviction; and, strongly aware of the perverting influence of the passions, he was inclined to listen the more willingly on a review of the case, and to give its full weight to every argument that opposed his first opinion.

His character had in it somewhat of the humourist; and it must be owned, that, at times, from the exuberance of his spirits, and a certain playfulness of mind, which, in his lighter hours, gave a singular charm to his conversation, he was apt to transgress the rules of that stricter decorum which is expected from, and which truly becomes the situation he filled. Even on the Bench he could not on all occasions keep a guard upon his constitutional vivacity, which sometimes broke out in amusing sallies of spirits, where the subject of discussion led to a ludicrous train of thought, or the occasional

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wit of the counsel made it difficult for the Judge to repress a happy repartee. But this rarely happened; and as his general demeanour was proper and becoming, so those slighter imperfections were veiled over and forgotten, amidst the valuable and splendid qualities of his mind, and the uncorrupted integrity which formed the basis of his judicial character.

His patronage of literary merit.

The situation which Lord Kames now filled, while it extended his opportunities of promoting every species of improvement, gave the greater weight and efficacy to his patronage; and his example and encouragement were more particularly beneficial in exciting a literary spirit, which now began to prevail among his countrymen, and which was destined to shine forth in his own times with no common lustre. It was but a just tribute to his merit, when many years afterwards, Adam Smith, then in the height of his literary reputation, said, in reference to a remark on the great number of eminent writers which Scotland had of late years produced, "We must every one of us ac-
"knowledge Kames for our master."

CHAP. I.

State of letters in Scotland at this period.

Before the period of which we now treat, that is, towards the middle of the eighteenth century, although science had attained in Scotland to a high degree of eminence by the superior genius and talents of MACLAURIN *, the taste for elegant literature was

Colin Maclaurin.

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* A very able sketch of the life of this eminent man has been given by Mr Murdoch, which is prefixed to the *Account of Sir Isaac Newton's Philosophical Discoveries.* The works published by Maclaurin, particularly his *Geometria Organica,* and his *Treatise on Fluxions,* entitle him to the rank of a mathematician of the first order. It was a peculiar merit of his, that his studies were constantly directed to some object of general utility. Philosophical speculation bore no other value with him, than as it was subservient to some practical end for the advantage of mankind. Accordingly, his short life was most actively employed in various useful designs for the benefit of his country. Besides the valuable assistance which his professional knowledge enabled him to give in those public works which depend on mechanical principles, it was on the basis of his calculations, that that great scheme, planned by the Reverend Dr Alexander Webster, for the support of the widows and children of the Clergy in Scotland, was framed and carried into execution.

But it is not only as a man of science, and as a public character, that the memory of Maclaurin is entitled to our respect and esteem. He was, in his private character, one of the best and worthiest of men. A distinguishing feature of his mind was, an amiable humility and diffidence of himself

BOOK II. feeble, and gave no promise of a rapid advancement. We have indeed in the wri-

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His great attainments, far from prompting to dogmatism or self-sufficiency, seemed to have no other effect than to convince him more powerfully of the narrow limits of the human understanding, to lead him to distrust all pretences to hypotheses or general theories, and to regard the highest discoveries yet made in the knowledge of Nature, as only a few feeble rays of light which it has graciously pleased the Sovereign Architect of the universe to afford to man, beyond what is strictly necessary, either for his good conduct or his enjoyment, in this temporary scene of things; and for the sole purpose of elevating his views, and directing his hopes to a more perfect state, where the desire of knowledge shall have its amplest gratification. That piety formed a remarkable ingredient in his character, we discern indeed from many passages of his writings, where he lays hold of every opportunity that presents itself, of pointing out the evident marks of wisdom and beneficent design conspicuous in the structure and phenomena of the material world. It is a circumstance likewise most worthy of notice, that the subject which engaged the last moments of the life of this excellent man, was that deduction in the concluding chapter of his *Account of Sir Isaac Newton's Philosophical Discoveries*, in which the existence of the Deity, as the Supreme Cause of the universe, is demonstrated; and the necessity of his agency as a First Mover, is proved, from the existence of phenomena, which could not have resulted of themselves from the laws of nature. Such are, the regular distribution of the orbs in the solar system, and the present fabric of the universe; which, though those laws are sufficient to carry on in a regular course when once established, yet they evidently seem insufficient to account for

tings of Maclaurin an example of a purity and simplicity of style, which is admirably adapted to works of science and philosophy; and which may possibly have had its influence on the composition of succeeding writers, even in the department of literature; by inducing a taste for chasteness of expression, an attention to grammatical correctness, and a disrelish of affected ornaments. The language of Maclaurin is the simple

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that first establishment. The law of gravity, for example, though essential to matter, and sufficient *per se* to retain the planets in their orbits, and to perpetuate their revolutions once begun, could not at first have separated them from the general mass of matter, given to each its particular magnitude, and projected them in a certain direction, determining their course in orbits nearly circular from east to west. The same laws, therefore, which now govern the material universe, if the supposition of a Creator and First Mover is excluded, are quite insufficient to account either for its production, or beginning of motion. This concluding chapter of the author's work is broken off abruptly; for, when dictating its last sentence to an amanuensis, his faculties were arrested by the hand of death. For a detail of some very remarkable particulars attending this event, we must refer to the account of his biographer Mr Murdoch. He died at Edinburgh, to the universal regret of his country, in June 1746, at the age of 48. The epitaph, composed by his son, (Lord Dreghorn, a Judge of the Court of Session), and inscribed on his monu-

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vehicle of his thoughts; and it possesses that highest excellence of didactic composition, that, while it conveys those thoughts with the utmost force and clearness to the mind of the reader, his attention is never for a moment called aside from the matter, to consider the expression or style of the writer *.

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ment in the Greyfriar's Church-yard, is alike excellent in thought and in expression:

Infra situs est
COLIN MACLAURIN,
Mathes. olim in Acad. Edin. Prof.
Electus ipso Newtono suadente.
H. L. P. F.
Non ut nomini paterno consulat,
Nam tali auxilio nil eget:
Sed, ut in hoc infelici campo,
Ubi luctus regnant et pavor,
Mortalibus prorsus non absit solatium:
Hujus enim scripta evolve,
Mentemque tantarum rerum capacem
Corpori caduco superstitem crede.

* *Montagne* has said well, "L'Eloquence fait injure aux "choses qui nous destourne à soy.—Je veux que les choses "surmontent, et qu'elles remplissent de façon l'imagination "de celuy qui escoute, qu'il n'aye aucune souvenance des "mots." And to the same effect we have a much higher

CHAP. I.
Dr Francis Hutcheson.

In the same period, too, the writings and the academical lectures of Hutcheson and Leechman at Glasgow, in the sciences of Morals and Theology, contributed to infuse into their numerous pupils a relish for correctness of language, and a purity of style, which, in their compositions, formed a strong contrast to the barbarous pedantry which till then had possession of the schools. Dr Francis Hutcheson, though an Irishman by birth, may with some propriety be classed among the Scottish writers; as he was of a Scottish family, received his education in Scotland, composed almost the whole of his works, and spent the best part of his life in that country. He was elected Professor of Philosophy in the University of Glasgow in 1729, in the room of Mr Gerschom Carmichael, the learned and ingenious commentator on Puffendorf; and his Lectures on Morals, Jurisprudence and Go-

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and graver authority. "Ipsæ res verba rapiunt. Omne "quod de re bonâ dilucidè dicitur mihi præclarè dici videtur; "istiusmodi autem res dicere ornatè velle, puerile est: planè "autem et perspicuè expedire posse, docti et intelligentis vi- "ri." Cicero, *de Fin.* lib. iii. c. 5.

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vernment deservedly procured him the highest reputation. He possessed in an uncommon degree the talent of diffusing into the minds of his pupils the ardour of improvement, and that enthusiasm in every noble and virtuous pursuit which strongly marked his own character. Dr Hutcheson's philosophy assumes for its basis the supremacy of the *Moral Sense*, as the judge of all the affections, designs and actions of men; maintaining, that in the exercise of virtue, and in a careful study of what is beautiful and honourable in conduct and manners, consists the true dignity, the peculiar excellence and the supreme happiness of our nature. Of the difference between his system and that of Lord Shaftesbury, with which it nearly coincides, I shall afterwards have occasion to take some notice *.

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* "Hutcheson," (says Dr Carlyle, who was his pupil and knew him intimately,) "was a man of a good presence and "most engaging countenance. He delivered his lectures "without notes, walking backwards and forwards in the area "of his class-room. As his elocution was good, and his "voice and manner pleasing, he fixed the attention of his "hearers at all times: and in explaining and enforcing the "moral duties and virtues, he displayed a fervent and per-

Dr William Leechman.

The style and composition of LEECHMAN, with equal purity, had more elegance than Hutcheson's, and contributed greatly to form the taste of his pupils in Theology, and improve the eloquence of the pulpit in Scotland. He was himself a most celebrated preacher, and it was generally regretted that his appointment to the Professorship of Divinity, which has no pastoral charge annexed to it, made his appearances in the pulpit from that time, rare and occasional. But this appointment was in the main for the benefit of the Church; as his Theological lectures, which were extremely popular, were the fruit of great knowledge of his subject, a sufficiency of learning, a sound judgment, a good taste; and above all, of a liberal and candid spirit, which had a sen-

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"suasive eloquence which was irresistible. Besides his daily "lectures through the week, he every Sunday evening open-"ed his class to the public, and delivered an excellent course "of lectures on *Grotius de Veritate Religionis Christianæ*, "which was attended by a most numerous audience not only "of the students of the University, but the people of the "city."—*Dr Carlyle's MS. Memoirs of his own Life.*

sible influence on the characters and the opinions of his pupils *.

But in the proper province of polite literature, it must be owned, that at this period the Scottish writers had made no conspicuous figure. While our neighbour country prided herself, with justice, on her literary splendour in the æra from the accession of Queen Anne to the middle of the eighteenth century, we had little to set in contrast with the numerous list of her elegant writers, but the names of *Arbuthnot*, *Thomson*, *Mallet*, and *Armstrong*. *Smollet*, a writer of great versatility of talents, and whose humorous delineations of life and manners are at this

* Mr William Leechman was, on the death of Dr Neil Campbell, raised to the office of Principal of the University of Glasgow; and in that department conducted himself with becoming dignity, and with the esteem and veneration of the whole body over which he presided. "He had (says Dr Carlyle) "the appearance of an ascetic monk, reduced by fasting "and prayer nearly to the figure of a skeleton: But in aid of "fine composition and excellent matter, he delivered his ser-"mons with such a pathetic voice, and earnest persuasiveness "of manner, that he captivated every audience."—*Dr Carlyle's MS. Memoirs.*

day almost unrivalled, had, in the latter part of that æra, only shewn the dawning of his genius in some attempts at poetical satire *. A taste for polite literature had, however, begun gradually to diffuse itself in Scotland, even from the time of the publication of the *Tatlers*, *Spectators* and *Guardians*; and, as in England, the effect of those writings, and more particularly of the papers of *Addison*, was conspicuous in substituting an ease and elegance of composition as a more engaging vehicle for subjects of taste, in the room of the dry scholastic style in which they had hitherto been treated; so, in Scotland, the attention of our youth, fresh from their academical studies, which yet retained a strong tincture of the antient school dialectics, was insensibly attracted to the more pleasing topics of criticism and the belles lettres. The cultivation of style became an object of study; and in

* See an interesting Account of the Life and Writings of *Smollet*, by Dr Anderson, the ingenious biographer of the British Poets.

BOOK II.

a few attempts at that lighter species of essay-writing, of which Addison had furnished a model, we see the dawning of a better taste in composition than had hitherto appeared in any publications from the Scottish press *.

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* As early as 1711, and in the short interval between the cessation of the *Tatler* and the commencement of the *Spectator*, a periodical paper was begun at Edinburgh, called *The Tatler, by Donald Macstaff of the North*, and was carried on through thirty weekly numbers. The author was Mr Robert Hepburn of Bearford, then only in his twenty-first year,—a youth, as Lord Hailes justly termed him, *ingenii præcocis et præfervidi*. These papers are evidently the production of a man of vigorous native powers, and of a mind not meanly stored with ancient learning, and familiar with the best writings of the moderns. The author might have shone in the treatment of general topics of moral discussion, or of criticism; but from a propensity not unnatural, where talents are combined with an ardent temperament, and sarcastic turn of mind, his compositions were fitted to give much offence, by the description of known characters, and by the personal satire which he employed, with no gentle or delicate hand, on some men of note, both in the ecclesiastical and civil departments, among his countrymen. Mr Hepburn, who had studied the civil law in Holland, became a member of the Faculty of Advocates at Edinburgh, in 1712. He died soon after. In the concluding paper of his *Tatler*, he announced as then in the press, a translation of Sir George Mackenzie's *Idea Eloquentiæ Forensis;* and in the Advocates'

CHAP. I.

First writers who cultivated style.

When the Scottish writers in the early part of the last century began to pay attention to style, they were particularly studious of attaining to that idiomatic ease of expression which struck them most in the popular English writers, as being different from the form of composition to which their ear was accustomed; and as all imitation has a tendency to run into extremes, so our Scottish writers fell naturally into that error. BLACKWELL is a strong example. He was a man of talents and learning, who was an orna-

Blackwell.

Library, is a small volume, containing two treaties of his writing; the one entitled, *Demonstratio quod Deus sit*, and the other, *Dissertatio de Scriptis Pitcarnianis*. The former of these is neatly and methodically written, and in good Latinity; the latter is somewhat jejune in point of matter, and too lavish of general panegyric.——A variety of other periodical papers succeeded Hepburn's *Tatler*; but all of them (previous to the recent works of established reputation, *The Mirror* and *Lounger*) of inferior merit. Of these we may notice as the least faulty, *The Ecclio*, carried on in weekly numbers from 1729 to 1733; *The Rêveur*, published in 1737; and *The Letters of the Critical Club* in 1738. The first, like the *Spectator* in its original form, was partly a newspaper; the other two were more strictly of the nature of periodical Essays.

BOOK II.

ment to his college*: but jealous, as it would seem, of being thought to have contracted any tincture of its scholastic pedan-

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* Dr Thomas Blackwell was the son of a clergyman, and born at Aberdeen in 1701. At the age of twenty-four, he was chosen Professor of Greek in the Marischal College, of which he was elected Principal in the year 1748. Besides his *Inquiry into the Life and Writings of Homer*, he was the author of *Letters concerning Mythology*, 8vo., and *Memoirs of the Court of Augustus*, in three volumes 4to; the last of which was a posthumous publication, left unfinished at his death, and completed by John Mills, Esq. Dr Blackwell was an amiable man in private life, and much beloved by his brethren of the University. As head of the College, his conduct was marked by a becoming dignity and propriety. He passed much of his leisure time at a pleasant villa upon the banks of the Dee, and delighted in the culture of his fields and garden. He died of a consumptive disorder, at the age of fifty-six; and in writing to one of his friends, on the very day of his death, he applied to himself the beautiful passage of Horace, in his Ode to Postumus,

Linquenda tellus, et domus, et placens
Uxor, neque harum quas colis arborum,
Te præter invisas cupressos
Ulla brevem dominum sequetur.

In the Appendix, No. VII. the reader will find a character of Dr Blackwell, drawn by his friend and pupil Dr Alexander Gerard, author of an *Essay on Taste*, &c.

try, his ambition was to write like a man of fashion, who lived in good company, and knew the world. His model of imitation was Lord Shaftesbury; but, wanting taste and judgment, his copy is a complete caricatura. His *Inquiry into the Life and Writings of Homer* is instructive, both from the just criticism, and the variety of classical matter which it contains; but the levity of the style, quite unsuitable to the subject, and the awkward mimickry of the ease and familiarity of Shaftesbury, in every sentence, render the work disgusting to a reader of good taste *.

* How absurd, for example, is the following strain of composition: "If Homer, then, came into the world in *such* a "country, and under so *propitious* an aspect of Nature, we "must next inquire, What reception he met with upon his "arrival; in what condition he found things; and what dis-"positions they must produce in an exalted genius and com-"prehensive mind? This is a difficult speculation, and I "should be under some apprehensions how to get through "it, if I did not know, that men moving like your Lordship, "in the higher spheres of life, are well acquainted with the "effects of *culture* and *education*." *Life of Homer*, p. 10.—"But now that I have ventured so far, I begin to apprehend

BOOK II.

The Edinburgh Review.

For some years after this time, Scotland appears extremely barren in every species of literary composition. A dawning, however, of a better age began to appear about the middle of the century. In the end of the year 1754, a few men of talents, who

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" that I shall be deserted. The habit of reconciling ex-
" tremes, when a public concern calls for attention, is become
" so natural to your Lordship, that it must incline you to
" wish our epic affairs not so desperate; and your knowledge
" of the poetical privilege will immediately suggest, that our
" private manners admit not such representation." *Ibid.* p. 28.—" Your Lordship will judge whether my fears are
" just, when, relying on that penetration which attends your
" opinions, I venture to affirm, that a poet describes nothing
" so happily as what he has seen; nor talks masterly but in
" his native language and proper idiom." *Ibid.* p. 29. The mimickry is not confined to style. Because Shaftesbury addresses his *Letter on Enthusiasm* to an anonymous Lord so Blackwell must address to an anonymous Lord his *Life of Homer*. Because Shaftesbury divides his Letter into sections, Blackwell adopts the same mode of division; and because the divisions in Shaftesbury are adorned with allegorical engravings, Blackwell has adorned the beginning and end of his sections with similar decorations. It were better he had attended to a just remark of his own, that " He who af-
" fects no other than his natural manners and style, has a
" better chance to excel, than if he should attempt to copy
" another man's way, though perhaps preferable both in lan-
" guage and gesture to his own." *Ibid.* p. 30.

came afterwards to make a distinguished figure in the literary world, projected the plan of a *Review*, to be published at Edinburgh, which, while its principal object was to give an account of the progress of Scottish literature, should occasionally take notice of such other works, either English or foreign, as seemed best entitled to the public attention. When it is known, that the chief conductors of this undertaking, were, SMITH, ROBERTSON, and BLAIR, it will be allowed, that if the scheme failed of success, it must have been from other causes than a want of ability in its projectors. Two numbers only were published, in July and December 1755; when the censure they most justly bestowed on some of those miserable effusions of fanaticism, which, at that time, disgraced both the pulpit and the press, excited such an outcry from the authors of those productions and their zealous partizans, that a regard both to the public tranquillity and their own, determined the reviewers to discontinue their labours. The two fragments that remain of this abortive undertaking are now become a literary curiosity. It must be owned, however, that they

BOOK II.

are valuable, rather from the names of the authors concerned in their production, than from any high intrinsic merit. We prize the most careless sketch which proceeds from the hand of a master *.

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* That article of the work which attracted most attention from those best fitted to judge of literary merit, was the review of *Johnson's Dictionary of the English Language*, which was known to be written by Adam Smith. It bears unquestionable marks of the ability of the writer, and displays the same philosophic views of universal grammar, which distinguish his *Essay on the Formation of Languages*. The reviewer allows the great merit of the work of Mr Johnson, in exhibiting a most ample and accurate collection of all the different meanings of each English word, justified by examples from the best authors; but thinks the plan not sufficiently grammatical, and is of opinion that it might be much improved by digesting the different meanings into general classes, ranged under the principal or radical signification. As examples of this improved method, he gives the particle *But* and the noun *Humour*, digested in the proposed systematic and grammatical form; and places them in contrast with the same articles as we find them in the work of Johnson. This is a very fair experiment; but the result, as we apprehend, is decidedly the reverse of what the reviewer intended. On candidly weighing these contrasted specimens, we cannot fail to observe, that the proposed improved plan of an English Dictionary, though capable of affording a greater display of metaphysical ingenuity in the compiler, would be very far inferior in practical utility, not only for the ordinary purposes of a book of reference and authority, but for the conveyance

The writings of DAVID HUME and Dr ROBERTSON, form a remarkable æra in the history of Scottish literature; and the former

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of a critical knowledge of the English language, to the simple plan which has been followed by the lexicographer. It is amusing, no doubt, to the philosophic mind, to trace the great variety of meanings annexed to the same word, up to a common origin, or one radical sense, from which all the various significations have diverged. We admire the ingenuity of the philologer who is capable of exhibiting so refined an analysis, and respect his talents for metaphysical discrimination. But all this laborious exercise of the mind is of very inferior utility to the clear and accurate specification of the various uses of the same term, distinctly exemplified in the practice of good writers. The latter plan is fitted to bring the English language to a fixed standard, to discourage all licentious innovations, and to serve as a code of authority, to which every writer may with confidence appeal against the errors of ignorance, or the abuses introduced by caprice or affectation. The former exhibits no standard which is entitled to general confidence; it is calculated even to encourage innovations upon speculative principles, independent of authority; every decision rests upon the *dictum* of the writer; and however ingenious may be his opinions, yet as they are founded chiefly on theory, they are liable to every cavil and objection to which metaphysical reasoning must constantly be subject.

*** Since the publication of the first edition of this work, I have received some further information regarding the writers in the *Edinburgh Review*, published in 1755, from my valued friend Lord CRAIG, with whose literary talents the pu-

BOOK II.

of these, which were the earlier of the two, are the first productions from the pen of a Scotsman which merit encomium, in point of English style. It is not, however, in the first publications of Mr Hume, that we are to look for those beauties of composition which we admire in his later and more elaborate works. The *Treatise of Human Na-*

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blic is well acquainted, from the many elegant papers of his composition in the *Mirror* and *Lounger*; and whose personal acquaintance with most of the writers enumerated, entitles his information to the greatest authority.—The review of *Gordon's History of Peter the Great*, was written by Dr Robertson; as was likewise that of *Anderson's History of Cresus King of Lydia*. Dr Hugh Blair wrote the review of the *4th Volume of Dodsley's Collection of Poems*. Dr John Jardine was the reviewer of *Ebenezer Erskine's Sermons*, and *Johnston's Sermon on Unity, &c.* Adam Smith, besides the review of *Johnson's Dictionary*, wrote the *Letter to the Authors of the Review*, recommending their giving an account of French literature, and exhibiting an able specimen of such an account. Mr James Russell, surgeon, afterwards Professor of Natural Philosophy in the University of Edinburgh, wrote several articles; probably the reviews of Medical, Anatomical, and Physical Works. The Preface to the Review, which contains the plan of the journal, was written by Mr Alexander Wedderburn, Advocate, (afterwards Lord Chancellor Loughborough, and Earl of Rosslyn); and a few of the short articles, containing accounts of Law-publications, are supposed to be likewise of his writing.

ture, printed in 1739, has no pretence to elegance of style; and the *Essays, Moral, Political and Literary*, exhibit in their earliest dress, as published in 1742, frequent inaccuracies of language, violations of the English idiom, and colloquial vulgarisms, which, though much amended, are not wholly removed in the later editions. It is therefore in his *History of England*, and principally in those parts of it which were the last composed, that we must look for that style of which the merit is universally confessed. Easy and natural as it appears to be, it was the cultivated fruit of long practice, and a sedulous attention to those models which he esteemed the best.

Dr Robertson.

His friendly rival, Dr ROBERTSON, who has contested with him the palm of historical composition, is likewise a great master in point of style; but his manner, which has its appropriate merits in a very high degree, is essentially different from that of Mr Hume. It is of a graver and more dignified cast, more removed from oral discourse, more pure, more polished, and more ornamented; but on all these accounts less na-

tural, and, on the whole, less engaging than that of his competitor.

These characteristic distinctions of manner in the two Scottish historians, arose from a difference of taste, and a consequent selection of different models of imitation among the preceding writers. Hume was an admirer of simplicity and ease of composition, and he appears to have bestowed his attention chiefly on the writers in whom those qualities are most conspicuous. He was partial to the French belles-lettres-writers, and admired particularly the easy and familiar style of their moralists and critics, as Montagne, Charron, Rochefoucault, Bouhours and Fontenelle; and his study of these authors, as well as his long residence in France, not only contributed to the formation of his style and manner of composition, but have given to his writings even a tincture of the French idiom. In his *Essay on Simplicity and Refinement*, he acknowledges his own particular taste, in the following observation, which he gives as one of the rules for attaining to good composition: "I shall deliver it" (says he) "as a

"third observation, That we ought to be "more upon our guard against the excess "of *Refinement*, than that of *Simplicity*; "and that, because the former excess is "both less *beautiful* and more *dangerous* "than the latter." Among the English authors, Addison was the writer he most admired for his style; and he seems to have formed his own chiefly upon that model, and on the writers whose characteristics were ease and familiarity, rather than elevation, or even correctness, as Shaftesbury and Temple. Robertson seems to have had a greater relish for refinement, and to have sought to attain a certain gravity and pomp of expression, as conceiving it more consonant to the dignity of historical composition. The style of both writers is equally the result of art and study, but the labour of the one is better concealed than that of the other, and the former has chosen the more pleasing models *. Boswell has ranked Dr

* See some excellent remarks on the different styles of Hume, Robertson, and Gibbon, in a late elegant and learned work, which contains a great store of classical knowledge and just criticism; the Translation of *The Works of Sallust*, by HENRY STEUART, Esq. of Allanton.

BOOK II.

Robertson as the first and best of the imitators of Johnson; and perhaps rightly; for he is an imitator of all that is most excellent in the style of his model, without any of his defects *.

Of the style of Lord Kames, I shall afterwards take particular notice; only remarking in this place, that it is not in the form or composition, but in the matter and substance of his writings, that their merit chiefly lies. Their principal utility consists less in their having furnished models of imitation, than in having excited a literary spirit among his cotemporaries, which, exerting itself in various departments, has in our own times produced compositions of standard merit, which have given to Scotland a distinguished rank in the commonwealth of letters.

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* But a perfect copy reflects the faults, as well as the beauties of the model; as in that exquisite specimen of literary imitation, (by Professor YOUNG of Glasgow,) *A Criticism on Gray's Elegy.*

The Rankenian Club.

Those attempts at periodical Essay writing, which I have noticed as the first indications of attention to style, were made by a few young men of good education, belonging probably both to the Church and Bar, who had formed societies or clubs for literary conversation, and improvement in composition. *The Rankenian Club* *, which was instituted for these purposes as early as 1716, and which continued its meetings till after 1760, was distinguished by the names

* It was so called from the name of the tavern-keeper in whose house they assembled.—I have been informed upon good authority (that of Dr Robertson) that the members of the Rankenian Club carried on a correspondence with Bishop Berkeley, on the subject of his metaphysical opinions; and that the learned prelate acknowledged he had received from that quarter some of the most acute and weighty objections that had ever been stated to his doctrine of the non-existence of matter.—A literary club continuing to hold regular meetings for near fifty years, is a singular phenomenon, and does honour to the Scottish metropolis. In the Appendix, NO. VIII. is a list of the members of this club, furnished from memory by the late George Wallace, Esq. Advocate, the last survivor of its number. A memorial of this kind will not be perused with indifference by the descendants or relatives of those whose names it records among the literary ornaments of a former age.

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of several of the most eminent literary characters at that time in Scotland; but there is no ground for supposing, that any of the periodical compositions above alluded to, proceeded from that society. Neither can I affirm, that any part in those publications is to be attributed to him who is the proper subject of these Memoirs. It is well known, that Mr Home was particularly fond of such institutions, which he regarded as contributing greatly to the improvement and diffusion both of literature and of science*; and that he always most willingly furnished his share in their debates and transactions. But whatever reason I may have to believe, I have no sufficient authority to assert, that

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* In Mr CHALMER's amusing and curious *Life of Thomas Ruddiman*, p. 83. mention is made of a literary society formed at Edinburgh in the year 1718, chiefly for the purpose of improvement in classical erudition; of which the original members were the Masters of the High School, and Ruddiman. Of this society Mr Home (Lord Kames) soon became a member, and his example was followed by other young gentlemen belonging to the Faculty of Advocates, and by some of the Ministers of Edinburgh. One fundamental rule of the club was, "that they should not meddle with affairs "of Church or State," a restriction extremely proper at a period when political faction ran very high.

any paper among the publications I have mentioned was the production of his pen.

The Select Society.

The *Select Society*, of which the design was projected by Mr Allan Ramsay, the painter *, was instituted at Edinburgh in 1754; and though soon more numerous and promiscuous than its title warranted, included most of the men of letters at that time resident in Edinburgh and its vicinity. The purposes of the institution were literary discussion, philosophical inquiry, and improvement in public speaking. Its meetings were held weekly during session time, at an early

* Mr Allan Ramsay *junior*, whose merits in his profession raised him to the distinction of King's Painter, was the only son of the celebrated Allan Ramsay, the Scottish poet, author of that beautiful pastoral drama the *Gentle Shepherd*. He was a man of talents, well acquainted with polite literature, and of elegant and sprightly conversation. He wrote some ingenious pieces on controverted topics of History, Politics, and Criticism, which he published under the title of the *Investigator*. His pamphlet on the subject of *Elizabeth Canning* attracted much attention at the time, and was the means of opening the eyes of the public, and even of the Judges, to the real truth and explanation of that mysterious event.

BOOK II.

hour on the Friday evenings, in one of the inner apartments of the Advocates' Library; a place peculiarly suitable, from those local associations which it could not fail to suggest to the mind*. The Society subsisted in vigour for six or seven years, and produced, (to use the words of an elegant writer), "debates such as have not often "been heard in modern assemblies——de- "bates where the dignity of the speakers "was not lowered by the intrigues of poli- "cy, or the intemperance of faction; and "where the most splendid talents that have "ever adorned this country were roused to "their best exertions, by the liberal and "ennobling discussions of literature and "philosophy †."

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* I allude to those feelings which CICERO so well describes in the beginning of his Fifth Book *De finibus*: "Constitui- "mus inter nos ut ambulationem postmeridianam conficere- "mus in *Academiâ*.—Naturâne nobis hoc datum dicam, an "errore quodam, ut cùm ea loca videamus in quibus memo- "riâ dignos viros acceperimus multùm esse versatos, magis "moveamur, quàm siquando eorum ipsorum aut facta audi- "amus, aut scriptum aliquod legamus?——Tanta vis admo- "nitionis inest in locis."

† *Account of the Life and Writings of Dr William Robert- son*, by Mr Professor D. STEWART, p. 15., where see in the

CHAP. II.

Its influence in promoting the literary spirit.

But the Select Society had an influence yet more extensive and permanent in diffusing the taste for letters in Scotland, and in kindling the fire of genius, which then began to display itself in various works, which have done honour to the national character. Besides the classical compositions of HUME, ROBERTSON, SMITH, and FERGUSSON; the writings of JOHN HOME, of PROFESSOR WILKIE, of LORD HAILES, LORD MONBODDO, SIR JOHN

Appendix a more detailed account of the Select Society by Dr CARLYLE, and a list of its members in 1759, who then amounted to above 130. "Among the most distinguished "speakers," says Dr Carlyle, "were Sir Gilbert Elliott, Mr "Wedderburn (Lord Loughborough), Mr Andrew Pringle "(Lord Alemoor), Lord Kames, Mr Walter Stewart, Lord "Elibank, and Dr Robertson. The Honourable Charles "Townshend spoke once: David Hume and Adam Smith "never opened their lips. The Society was also much ob- "liged to Dr Alexander Monro *senior*, Sir Alexander Dick, "and Mr Patrick Murray, Advocate, who, by their constant "attendance and readiness on every subject, supported the "debate during the first year of the establishment, when "otherwise it would have gone heavily on. The same part "was afterwards more ably performed by Lord Monboddo, "Lord Elibank, and the Reverend William Wilkie: all of "whom had the peculiar talent of supporting their paradoxi- "cal tenets by an inexhaustible fund of humour and argu- "ment."

BOOK II.

DALRYMPLE, the elder MR TYTLER, all members of the Select Society of Edinburgh, have thrown a lustre on that institution, as marking the commencement of a literary æra, which it is doubtful if the succeeding times have yet seen surpassed. The Tragedy of *Douglas* has now for fifty years maintained its reputation on the stage, and bids fair to keep its rank among the best productions of the modern English drama. The *Epigoniad* of Wilkie is the bold attempt of an energetic mind to try its powers in the most arduous path of poetry, the Epic; without that correctness of judgment, and previous discipline in the practice of harmonious numbers, which can alone ensure success in an age of polish and refinement. It has accordingly been measured by that standard of criticism, which the most unqualified judges can easily apply,—a comparison with the most perfect productions of its kind; and its palpable defects have involved in an indiscriminate condemnation its less obvious, but real merits *. The wri-

* The merits of the *Epigoniad* have been illustrated by the pen of no ordinary critic, (Mr David Hume), in a letter to

tings of Lord Monboddo display a profound acquaintance with the philosophy of the ancients, which he has explored with the ar-

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the authors of the *Critical Review*, published in that journal for April 1759. The work had been reviewed with severity, and, as Mr Hume thought, uncandidly, in the same journal, (July 1757.) After a judicious abstract of the story of the poem, and some very happy specimens of its execution, among which, it is worthy of remark, that there are several passages which the former critic had selected for censure, the writer concludes, "that the execution of the *Epigoniad* is better "than the design, the poetry superior to the fable, and the "colouring of the particular parts more excellent than the "general plan of the whole. Of all the great epic poems "which have been the admiration of mankind, the *Jerusalem* "of Tasso alone would make a tolerable novel, if reduced to "prose, and related without that splendour of versification "and imagery by which it is supported; yet, in the opinion "of many able judges, the *Jerusalem* is the least perfect of "all these productions; chiefly because it has least nature "and simplicity in the sentiments, and is most liable to the "objection of affectation and conceit. The story of a poem, "whatever may be imagined, is the least essential part of it: "the force of versification, the vivacity of the images, the "justness of the descriptions, the natural play of the pas-"sions, are the chief circumstances which distinguish the "great poet from the prosaic novellist, and give him so high "a rank among the heroes in literature: and I will venture "to affirm, that all these advantages are to be found in an "eminent degree in the *Epigoniad*."

BOOK II.

dour, and admired perhaps with the prejudices of an enthusiast; but in so far as they relate to criticism and philology, they are valuable monuments of classical taste, and a sound discriminating judgment in the excellencies and defects of rhetorical composition *. In the *Annals of the History of Scotland* by Lord Hailes, we have a remarkable specimen of that acute spirit of investigation which is requisite for developing the sources of authentic history, and that saga-

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* James Burnett of Monboddo, author of the *Origin and Progress of Language*, in six volumes 8vo., and of *Ancient Metaphysics*, in six volumes 4to., was one of the most learned writers of the eighteenth century. He was born at Monboddo, his paternal seat, in Kincardineshire, in November 1714; he was educated at King's College Aberdeen, and studied the civil law at Groningen. He had considerable practice as an Advocate in the Court of Session, being esteemed an able civilian, and possessing a clear, ornate and forcible elocution. He was raised to the Bench in 1767, and died in 1799, at the age of 85. He was a man of great worth, honour, and moral rectitude; but of much singularity of opinions and character, which appeared not only in the doctrines contained in his writings, but in the strain of his conversation, and in the habits of his life. His notions of the origin of language, arts and sciences, are much akin to those of the Epicureans, of which Lucretius has given an ample detail in

city of judgment, and scrupulous zeal in the search of truth, which are fitted to purify

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his fifth book, *De rerum Naturâ*, and which Horace has abridged in the third of his satires:

Cùm prorepserunt primis animalia terris,
Mutum et turpe pecus, glandem atque cubilia propter,
Unguibus et pugnis, dein fustibus; atque ita porrò
Pugnabant armis quæ post fabricaverat usus:
Donec verba quibus voces sensusque notarent
Nominaque invenêre: dehinc absistere bello,
Oppida cœperunt munire, et ponere leges.

The confirmation of his theory of language, his Lordship finds in the condition of savage nations; in those few examples of human creatures discovered in an insulated state in deserts; and in the rude and defective nature of some languages, and the highly artificial and philosophic structure of others, as, for example, the Greek, the Sanscreet, &c. Lord Monboddo carried his admiration of the ancients to such a pitch, as to maintain their superiority to the moderns, not only in philosophical attainments and recondite science, in the arts of painting, sculpture, architecture, music, poetry, oratory, and all the various species of literary composition; but even in bodily strength, stature, and longevity; esteeming the present race of mortals a degenerate breed, both with respect to mental and corporeal endowments. Yet, with all these eccentricities of opinion, his writings display great erudition, an uncommon acquaintance with Greek philosophy and literature, a profound knowledge of grammar and philo-

BOOK II. those sources from every taint of fiction *. The *Memoirs* by Sir John Dalrymple, rela-

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logy, and a just and excellent spirit of criticism, both on the authors of antiquity, and on the English classical writers of the last and preceding ages.

Lord Monboddo's temper was affectionate, friendly and social. He was fond of convivial intercourse; and it was his daily custom to unbend himself, after his professional labours, amidst a select party of literary friends, whom he invited to an early supper. The entertainment itself partook of the *costume* of the ancients: it had all the variety and abundance of a principal meal; and the master of the feast crowned his wine, like Anacreon, with a garland of roses. His conversation, too, had a *race* and *flavour* peculiarly its own: it was nervous, sententious, and tinctured with genuine wit. His apothegms, (or, as his favourite Greeks would rather term them, Γνωμαι), were singularly terse and forcible; and the grave manner in which he often conveyed the keenest irony, and the eloquence with which he supported his paradoxical theories, afforded the highest amusement of those truly attic banquets, which will be long remembered by all who had the pleasure of partaking in them.

* Sir DAVID DALRYMPLE of Hailes, one of the most learned of the Scottish Judges in the eighteenth century, was the son of Sir James Dalrymple, Auditor of Exchequer, and great-grandson of the Viscount of Stair. He was born in the year 1726; and after eighteen years practice as an Advocate in the Court of Session, he was raised to the Bench in

tive to a period of the English history which has been subject, perhaps beyond all others, to the distorted representations of party-prejudice, are written with vigour, and with no common impartiality; for the writer neither palliates the vices of a friend, nor disguises the virtues of an enemy.——The *In-*

1766, and to a seat in the Court of Justiciary in 1776. In addition to the most faithful and exemplary discharge of his official duties, he distinguished himself as an able writer, in various departments of Literature, Historical, Philological, Critical and Theological; but most particularly, in researches connected with the Antiquities of his native country. His *Annals of Scotland* is a work of very high merit; formed in some measure on the plan of the President Henault, in his *Abrégé Chronologique de l'Histoire de France*, but with a more liberal intermixture of philosophic reflection, and a superior acuteness of critical investigation. His *Inquiry into the Secondary Causes which Mr Gibbon has assigned for the rapid growth of Christianity*, has acquired him the reputation of a profound scholar, as well as of an able and sound theologian. The erudition of Lord Hailes was not of a dry and scholastic nature: he felt the beauties of the composition of the ancients; he entered with taste and discernment into the merits of the Latin poets, and that peculiar vein of delicate and ingenious thought which characterizes the Greek epigrammatists; and a few specimens which he has left of his own composition in that style, evince the hand of a master. It would not be easy to produce from the works of any modern Latin poet, a more delicate, tender, and pathetic effusion, or

BOOK II. *quiry into the Evidence against Mary, Queen of Scots*, by Mr Tytler, is allowed to be a most acute specimen of historical research,

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an idyllion of greater classical purity, than the following Iambics on a domestic calamity of the severest nature:

On the Death of his first Wife, in Childbed of Twins.

Vidi gemellos, et superbivi parens,
Fausti decus puerperi;
At mox sub uno flebilis vidi parens
Condi gemellos cespite!
Te, dulcis uxor! Ut mihi sol occidit,
Radiante dejectus polo!
Obscura vitæ nunc ego per avia,
Heu, solus, ac dubius feror!

Lord Hailes was a man of wit, and possessed a strong feeling of the absurd and ridiculous in human conduct and character, which gave a keen edge of irony both to his conversation and writings. To his praise, however, it must be added, that that irony, if not always untinctured with prejudice, was never prompted by malignity, and was generally exerted in the cause of virtue and good morals. How much he excelled in painting the lighter weaknesses and absurdities of mankind, may be seen from the papers of his composition in the *World* and the *Mirror*. His private character was every thing that is praiseworthy and respectable. In a word, he was an honour to the station which he filled, and to the age in which he lived.—He died in his 67th year, on the 29th of November 1792.

which gave a new direction to the current of popular opinion, while it furnished a model of controversial discussion, conducted with spirit and resolution, yet free from personality or unbecoming acrimony.

Of the Select Society, Lord Kames was one of the chief supporters; and there are those yet alive who recollect with pleasure the brilliant display of his fancy and ingenuity in unpremeditated discussions on the various topics, literary and philosophical, which furnished their debates. It may indeed with truth be asserted, that no association of which he was a member was ever known to flag, or abate in the spirited prosecution of its objects, while he took a share in its proceedings.

Poker Club.

A political question on the expediency of establishing a Scottish militia, on the same footing with that in England, a topic which warmly engaged and divided the public mind about the years 1760, 1761 and 1762, gave rise to another club, which comprehended the greater part of the men of letters in Scotland, at that period. This was

BOOK II. the *Poker Club*, instituted in the year 1762. Lord Kames, though a warm friend to the measure of a national militia, had his own peculiar ideas on that subject, which he has given to the public in one of his later works, (*Sketches of the History of Man*, Book ii. Sk. 9.) But the consideration of his office and station must have prevented his joining a society of this nature, however warmly he might have approved of their principles, and however keenly he relished social and convivial intercourse among men of wit and literary talents. The Poker Club subsisted in vigour and celebrity for many years, and continued its weekly meetings with great regularity, long after the object of its institution had ceased to engage attention: and it is not to be doubted that its influence was considerable in fostering genius, and promoting the cultivation of good taste and elegant literature.

A few publications of a political nature had, in the infancy of the Poker Club, been published under its auspices; but like most productions of that sort, they were ephemeral, and are now quite forgotten. The only

publication of sterling merit, which has outlived the occasion which called it forth, is *The History of the Proceedings in the Case of Margaret, commonly called Sister Peg*; a performance of great wit and humour, written in a most happy vein of irony, and in imitation of Dr Arbuthnot's *History of John Bull*, to which it is an admirable counterpart and supplement. This ingenious satire is well known to have proceeded from the pen of one of the ablest of the Scottish writers of that era; I mean Dr Adam Fergusson, author of *An Essay on the History of Civil Society*; *The History of the Rise and Termination of the Roman Republic*; and *Lectures on Moral Philosophy*; works which have given their author a distinguished rank in the history of Scottish literature *.

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* In the MS. Memoirs of Dr Carlyle, an amusing account is given of the *Poker Club*, of which he was a zealous member, and a constant attender of its meetings. He has likewise preserved a list of its members, which the reader may find in the Appendix to this Volume, NO. VIII. Art. 2.

"In the beginning of 1762 (says Dr Carlyle) was institu-
" ted the famous club called the *Poker*, which lasted in great

BOOK II.

The Philosophical Society.

A Society had been instituted at Edinburgh, in 1731, for the improvement of medical knowledge, by collecting and publish-

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" vigour, down to the year 1784. About the third or fourth " meeting of the club, we thought of giving it a name that " should be of uncertain meaning, and not be so directly " offensive as that of *Militia Club*, to the enemies of that " scheme. Adam Fergusson fell luckily on the name of " *Poker*, which we perfectly understood, and which was at " the same time an enigma to the public. This club com- " prehended almost all the literati of Edinburgh and its " neighbourhood, most of whom had been members of the " *Select Society*, (those only excepted, who adhered to the " enemies of the militia scheme,) together with a great many " country gentlemen, zealous friends to the militia, and warm " in their resentment at its being refused to us, and an in- " vidious line thus drawn between England and Scotland. " The establishment of our club was frugal and moderate, as " all clubs for a public purpose ought to be. We met at our " old landlord's of the *Diversorium* (Tom Nicholson's near " the Cross). The dinner was on the table at two o'clock, " at one shilling a-head. We drank the best claret and sherry, " and our reckoning was punctually called at six o'clock. Af- " ter the first fifteen, who were chosen by nomination, the " members were elected by ballot; and two black balls ex- " cluded a candidate. William Johnston (Sir William Pul- " teney Johnston) was chosen secretary to the club, with the " charge of superintending all publications, aided by two " members with whom he was to consult. In a laughing " hour, Andrew Crosbie, Advocate, was appointed *Assassin*

ing Essays and Observations on the various branches of Medicine and Surgery. The

" to the club, in case any service of that sort should be need-
" ed: but David Hume was named for his assistant; so that
" between *plus* and *minus* there was no hazard of much
" bloodshed. After some years, a quarrel with our landlord,
" who was a foolish fellow, sent us to *Fortune's* Tavern at
" the Cross-keys, where the only change was, that our din-
" ners were more showy, and much dearer, but not better.
" This slackened the attendance of some of our best mem-
" bers; and the celebrity of the club brought others among
" us who had no title to be there, and whose minds were not
" congenial. In short, the Poker dwindled away, by the
" death or desertion of some of the old members, and the
" non-attendance of the new. An attempt was made to re-
" new it about the year 1786 or 1787, by the admission of
" some young men of talents, who, together with the most
" zealous of the old, might revive the spirit of the institu-
" tion. *Nec vera virtus cùm semel excidit, &c.;* from the
" change of times and habits, the attempt did not succeed.
" ——When Captain James Edgar, one of the original *Po-*
" *kers*, was at Paris about 1773, during the flourishing times
" of the club, he was asked by D'Alembert to go with him
" to their club of literati; to which he answered with more
" bluntness than French *politesse*, that the company of lite-
" rati was no novelty to him: for he had a club at Edin-
" burgh, with whom he dined every week, composed, he be-
" lieved, of the ablest men in Europe. This, (adds Dr Car-
" lyle, with the pardonable nationality of an old Scotsman,)
" was no singular opinion; for the most enlightened foreign-
" ers had formed the same estimate of the literary society of

BOOK II.

plan of this Society was enlarged, in 1739, at the suggestion of the celebrated MACLAURIN, and extended to subjects of philosophy and literature. It was now known by the title of the Society for Improving Arts and Sciences, but more commonly by that of *The Philosophical Society of Edinburgh* *. At

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" Edinburgh at that time. The Princess Dashkoff disputing " with me, one day at Buxton, about the superiority of Edin- " burgh, as a residence, to most of the cities of Europe, when " I had alleged various particulars in which I thought we " excelled: No, said she; but I know one article you have " not mentioned, in which I must give you clearly the pre- " cedency; which is, that of all the societies of men of ta- " lents I have met with, in my travels through Europe, " yours is the first in point of abilities."

* The President of the Society was James, Earl of Morton, afterwards President of the Royal Society of London; its Vice-Presidents, Sir John Clerk of Penicuik, one of the Barons of Exchequer, and Dr John Clerk; its Secretaries, Mr Maclaurin and Dr Plummer; and its ordinary members, some of the most distinguished men of letters in Scotland at the time †. The meetings of the Society were interrupted for some years, from the disorders of the country during the Rebellion 1745-6, and the subsequent death of Maclaurin;

† In the *Scots Magazine* for June 1804, are two letters from Professor Maclaurin to his friend Professor Johnston of Glasgow, respecting the institution of this Society, and its early proceedings.

what period Mr Home had first become a member of this society is uncertain; but it appears from a letter of Dr Franklin to him in February 1769, that he had a short time before been elected its President; and in the volume of the Transactions of that body, published in 1771, under the title of *Essays and Observations, Physical and Literary*, are three papers of his writing, viz. on the Laws of Motion, on the Advantages of Shallow Ploughing, and on Evaporation. They evince that ingenuity which is conspicuous in all his productions; but the papers on the subject of Physics are not built on sound principles.

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they were renewed however, in 1752; and under the direction of its new secretaries, David Hume and Dr Alexander Monro, the first volume of its Transactions was published in 1754, the second in 1756, and the third in 1771. In 1782, a scheme was proposed by Dr Robertson, Principal of the University, for the establishment of a Society on a more extended plan, which, upon the model of some of the foreign Academies, should have for its object the cultivation of every branch of science, erudition and taste. This plan was carried into effect; and *The Royal Society of Edinburgh*, which comprehended all the members of the Philosophical Society, and many others eminent in science and in literature, was incorporated by charter from the King, in 1783.

BOOK II.

Lord Kames's Essay on the Laws of Motion.

The disquisition by Lord Kames on the Laws of Motion, is a striking example of two very dangerous errors in philosophy: The one is, an unwillingness to acknowledge the existence of ultimate facts, both in the philosophy of matter and of mind, beyond which the powers of human reason are not fitted to penetrate: and the other, the want of a due attention to the proper provinces of physical and metaphysical reasoning, and the blending of those two species of investigation and argument, which ought always to be kept separate and distinct.

The connexion between impulse and motion is now generally allowed by the ablest philosophers to be one of those phenomena in nature that cease to occasion surprise, by their continual recurrence to our observation; but which, when attempted to be explained, are utterly unaccountable to human reason; so that we must satisfy ourselves at last with holding them as ultimate facts, beyond which our investigation of causes cannot proceed. Sir Isaac Newton has laid down the laws of motion, which are discoverable from uniform experience and the

observation of facts; but he never attempted to go further, or to investigate the efficient cause of motion, or the connexion between the impelling power and the object impelled. So the same great philosopher, although he discovered and explained the law of universal gravitation as operating on all the material universe, never pretended to discover the primary cause why that law of gravitation universally took place. He knew the attempt was fruitless, and that all that human intellect could attain to was, to ascertain the existence of the law, from the universality of the phenomenon *.

* It may be alleged in opposition to this assertion, that Newton endeavoured to account for the gravitation or deflection of the planets to each other, by means of an elastic Ether filling the whole space of the solar system, and increasing in density according to its distance from the sun. But by this conjecture, Newton knew well, that he did nothing more, (supposing the conjecture true,) than ascend one step higher in the inquiry; for, allowing an elastic ether to exist, this was only the discovery of another law of nature; the question still remained, What was the cause of that elasticity? Newton clearly saw this consequence, and therefore he very early abandoned his conjecture as fruitless; or at least put so little value upon it as to make no use of it. Nay, in

BOOK II.

It has been very generally held as a maxim in metaphysical reasoning, that those objects which stand in the relation of cause and effect, are contiguous to each other, and that "nothing can operate in a time or "place which is ever so little removed from "those of its existence."—"The relation "of contiguity," says Mr David Hume, "we now consider as essential to that of "causation." The admission of this maxim as a principle of metaphysics, (a position however by no means free of doubt, even in that species of reasoning), has led some philosophers to apply the same maxim to physical causes, where sensible experience tells us that it cannot possibly be founded in truth. The phenomena of Vision, of Magnetism, of universal Gravitation, are all direct contradictions to the maxim, That causes and effects are contiguous, and that nothing can operate but where it is. Lord Kames,

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an edition of his *Principia*, published under his own eye, there is a preface to the work, written by Mr Cotes, a very eminent geometrician, in which the absurdity of the hypothesis of an elastic ether is completely exposed. See Dr ROBISON's *Elements of Mechanical Philosophy*, p. 350.

in speculating upon the laws of motion, was unwarily led to conceive that the maxim above alluded to, must be received as an axiom in physics; and the scope of his Essay on that subject, is to establish the three following propositions: *First*, That motion is a continued action, which must infer some power continually acting: *Secondly*, That as matter resists a change from rest to motion, as well as from motion to rest, this resistance is not to be accounted for by the mere negation of a cause, but must be held as a positive effect, requiring a cause, as much as motion does: *Thirdly*, That inanimate matter is endowed with a power to preserve itself in motion; which power is of a different kind from that which resists a change from rest to motion.

It would be an unprofitable task to enter into the consideration of the arguments which the author employs, in support of these propositions, or to engage in a serious refutation of them. We have seen that these notions had occupied his attention at a very early period of life, and were the sub-

BOOK II.

ject of a keen epistolary controversy between him and the celebrated Andrew Baxter*. After an interval of many years from the publication of this Essay on the Laws of Motion, the same speculations were resumed by Lord Kames in the latter period of his life; and among his letters of correspondence, are several from Dr Thomas Reid on this subject, in which that acute philosopher, with all the precision and perspicuity which distinguish his writings, canvasses the opinions of his friend, and with admirable patience, endeavours to convince him of his errors. These letters, the last of which was addressed to Lord Kames within a very few weeks of his death, and when in the 87th year of his age, the reader will find at NO. IX. of the Appendix. Among other considerations they naturally suggest is this, which I cannot but regard as a phenomenon fertile both of pleasing and of melancholy reflection; that in the last stage of our existence, it is a favourite occupation of the mind, not only to recall the remembrance

* See *suprà*, p. 86.

of the scenes and actionsof our youth, but to retrace those ideas, and cherish those speculations which first engaged our reasoning powers *.

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* An eminent philosopher, in treating of the influence of prevailing habits of association on our usual train of thinking, assimilates this favourite employment of the mind in old age, of recalling the scenes and occupations of youth, to the state of the mind in dreaming. Things present to the senses are not perceived, and the memory rests with a stronger attention on those objects and actions which engaged us while the facility of association was greater than it is found to be in our maturer years.—*Elements of the Philosophy of the Human Mind*, by Professor D. STEWART, chap. v. sect. 5. This account of the phenomenon is probably in a great measure true; and it must be allowed to be in so far a source of melancholy reflection, that it infers a decay of some of the mental powers: But I am persuaded that the pleasure we take in old age, in reviewing the scenes and occupations of infancy and youth, is chiefly to be referred to another source; to that admirable faculty of our nature, by which, in defect of present amusements, and to compensate for their want, we can retrace by the aid of memory and imagination the scenes and actions which furnished our past enjoyments, and *feed* upon that mental *picture* with a relish very little inferior to that which we formerly felt from the reality;—a most beautiful part of the human economy, and which we cannot contemplate without a fervent emotion of gratitude to that POWER who so framed us.—It is with justice, then, that Cicero makes the venerable Cato rank this habit of the mind in old age, not

BOOK II.

His friendship with Adam Smith.

The influence of Lord Kames's patronage, joined to his example, was felt in a very eminent degree in many departments of literature. It was by his persuasion and encouragement, that Mr Adam Smith, soon after his return from Oxford, and when he had abandoned all views towards the Church, for which he had been originally destined, was induced to turn his early studies to the benefit of the public, by reading a course of Lectures on Rhetoric and the *Belles Lettres*. He delivered those lectures at Edinburgh in 1748, and the two following years, to a respectable auditory, chiefly composed of students in law and theology *; till called to

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among its weaknesses, but, on the contrary, among its happiest concomitants: *Res multùm et diu cogitatas——quæ si exsequi nequirem, tamen me lectulus oblectaret meus ea ipsa cogitantem, quæ jam agere non possem. Sed ut possim, facit acta vita. Semper enim in his studiis laboribusque viventi, non intelligitur quando obrepat senectus. Ita sensim sine sensu ætas senescit; nec subitò frangitur, sed diuturnitate extinguitur.* Cic. *De Senectute*, c. xi.

* Among Mr Smith's pupils as students of rhetoric, were Mr Alexander Wedderburn (Lord Chancellor Loughborough); Mr William Johnston (Sir William Pultney); Mr Oswald of

Glasgow in 1751, to fill the Chair of Logic in that University, which he soon after exchanged for the Professorship of Moral Philosophy, vacant by the death of the celebrated Dr Francis Hutcheson.

With every thing most interesting relative to the character and talents of Dr Adam Smith, the public is sufficiently acquainted, from the ingenious and philosophical Account of his Life and Writings by Mr Professor Stewart. The connexion between him and Lord Kames, which began at an early period, subsisted through life, with mutual and undiminished esteem. While they canvassed with freedom the opinions of each other on those subjects where there was a coincidence of research or discussion, as happened on more than one topic both of politics and of morals, their friendship suffered no abatement from their difference of sentiment in matters of speculation. In

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Dunkeir; Mr John Millar, (Professor of Law); Mr Hugh Blair, and others, who made a distinguished figure both in the department of literature and in public life.

BOOK II.

Dr Smith's elaborate work *On the Wealth of Nations*, several topics are discussed which had previously been treated by Lord Kames, under the head of Finances, in his *Sketches of the History of Man*; and in particular, on the subject of Taxes, there is, in some points, a considerable difference of opinion, as in others a striking coincidence between these two able writers *. Dr Smith's *Theory of Moral Sentiments* had not appeared, till after the publication of two editions of his friend's *Essays on the Principles of Morality and Natural Religion*. Lord Kames read the work with attention, and finding it necessary to canvass and impugn the system of sympathy, which he judged to be by far too narrow a basis on which to build all the moral feelings and social duties of man, he sent to Dr Smith a transcript of the observations on his theory, which he had prepared to insert in a third edition of the *Essays on Morality*, then about to be published †.

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* See *posted*, Book III. Chap. V.

† The objections here alluded to, are sufficient to overturn the theory of sympathy, being the sole foundation of mora-

The following letter on that subject from Dr Smith, is equally to the honour of both correspondents.

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lity. It is observed by Lord Kames, on the notion of Mr Smith, That sympathy with the sufferings of another depends on our imagining what would be our own feelings were we in his place; *first*, That if the torments of a man on the rack be not obvious to our senses from his screams and contortions, we should learn nothing from any fiction of our own imagination that we were in the sufferer's place; that, on the contrary, instead of placing ourselves in his situation, we derive satisfaction in every such case, from the consciousness that we are exempted from those sufferings, for which, notwithstanding, we feel the strongest pity; and that this play of the imagination, therefore, instead of being the origin and cause of our feelings, tends in truth to moderate and diminish them. *Secondly*, If this theory were true, it would follow, that those in whom the power of fancy was the strongest, would be the most subject to the impressions of sympathy, and feel the most sensibly the force of the moral duties founded on that supposed basis; and *vice versâ*; a fact contradicted by daily experience. *Lastly*, It is observed, that this theory, though pretending to give an account of the origin of our moral sentiments, in so far as they respect *others*, fails altogether in accounting for such sentiments as regard *ourselves*: "My distress," (says Lord Kames), "upon losing an only son, or my gratitude for a kindly office, are sentiments that neither need to be explained, by "imagining myself to be another person, nor do they admit of such explanation."—*Essays on Principles of Mora-*

"My Dear Lord, Nov. 16. 1778.

"I am much obliged to you for the kind communication of the objections you pro-

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lity, edit. 3. p. 109. *et seq.*—The objections made by Lord Kames to Dr Smith's Theory, were previously communicated by the former to his friend Dr Reid at Glasgow, who thus expresses his opinion of them: "I have always thought Dr "S——'s system of Sympathy wrong. It is indeed only "a refinement of the *Selfish System*; and I think your ar- "guments against it solid. But you have smitten with a "friendly hand, which does not break the head; and your "compliment to the author I highly approve of."—*Letter from Dr Reid to Lord Kames.*——To the *Theory of Moral Sentiments*, a work certainly of great ingenuity, may be most justly applied the observation made by David Hume, in the beginning of his Essay entitled *The Sceptic*. "There "is one mistake to which they (philosophers) seem liable "almost without exception; they confine too much their "principles, and make no account of that vast variety which "Nature has so much affected in all her operations. When "a philosopher has once laid hold of a favourite principle, "which perhaps accounts for many natural effects, he ex- "tends the same principle over the whole creation, and re- "duces to it every phenomenon, though by the most vio- "lent and absurd reasoning. Our own mind being narrow "and contracted, we cannot extend our conception to the "variety and extent of Nature, but imagine that she is as "much bounded in her operations, as we are in our specula- "lation."—But David Hume himself, (so blind are we to

pose to make, in your new edition, to my system. Nothing can be more perfectly friendly and polite than the terms in which you express yourself with regard to me; and I should be extremely peevish and ill-tempered, if I could make the slightest opposition to their publication. I am no doubt extremely sorry to find myself of a a different opinion, both from so able judge of the subject, and from so old and so good a friend: But differences of this kind are unavoidable; and, besides, *Partium contentionibus respublica crescit.* I should have been waiting on your Lordship before this time, but the remains of a cold have for these four or five days past, made it inconvenient to go out in the evening. Remember me to Mrs Drummond; and believe me to be your most obliged and most humble servant,

ADAM SMITH."

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our own feelings), fell under this very censure which he has here justly pronounced on the theories of others. His own theory of Utility he has extended beyond its due bounds, with as little propriety, and with the same partial fondness for a favourite principle, as Adam Smith has the theory of Sympathy.

BOOK II.

Dr Robert Watson.

On Mr Smith's removal to Glasgow in 1751 *, Mr ROBERT WATSON, afterwards

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* Mr Smith filled the chair of Professor of Moral Philosophy at Glasgow for twelve years with great reputation, when he was induced to quit that establishment at the earnest request of Mr Charles Townshend, who was desirous he should undertake the office of travelling tutor to Henry, Duke of Buccleuch. "The liberal terms," (says Mr Stewart), "in which the proposal was made to him, added to the "strong desire he had felt of visiting the Continent of Eu-"rope, induced him to resign his office at Glasgow." His elegant biographer was probably unacquainted with an anecdote attending this resignation, which is of a nature so truly characteristic of the eminent person to whom it relates, that I am glad to seize the slightest pretence for inserting it.—When Mr Smith undertook the charge of accompanying the Duke of Buccleuch to the Continent, it became necessary for him to resign his Professorship in the College of Glasgow, in the middle of his annual course of lectures. He procured a literary friend, in whose talents he had perfect confidence, to finish the course; and furnished him, for that purpose, with the notes from which he had been in use to deliver his prelections; thus providing as well as he could, that his pupils might suffer no disadvantage from the change. But still fearing that there was some injustice done to those young men who had paid the usual fees on the faith of having the benefit of a complete course of his lectures, he resolved to set his conscience at ease upon that score. After concluding his last lecture, and publicly announcing from the Chair, that he was now taking a final leave of his auditors; acquainting them at the same time with the arrangement he had made to the best

Principal of the University of St Andrew's, (and distinguished as the able and judicious historian of Philip II. *), at that time a CHAP. I.

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of his power for their benefit; he drew from his pocket the several fees of the students, wrapped up in separate paper parcels, and beginning to call up each man by his name, he delivered to the first who was called, the money into his hand. The young man peremptorily refused to accept it, declaring, that the instruction and pleasure he had already received, was much more than he either had repaid, or ever could compensate: and a general cry was heard from every one in the room, to the same effect. But Mr Smith was not to be bent from his purpose. After warmly expressing his feelings of gratitude, and the strong sense he had of the regard shewn to him by his young friends, he told them, this was a matter betwixt him and his own mind, and that he could not rest satisfied unless he performed what he deemed right and proper.—"You must not refuse me this satisfac-"tion.—Nay, by heavens, gentlemen, you shall not;"—and seizing by the coat the young man who stood next to him, he thrust the money into his pocket, and then pushed him from him. The rest saw it was in vain to contest the matter, and were obliged to let him take his own way.—It is not always that the speculative doctrines of the philosopher thus influence his conduct and practice.

* A continuation of this work, containing the reign of Philip III. was left imperfect by Dr Watson at his death. It was very ably completed, and published for the benefit of his heirs, by Dr William Thomson, known as the author of several ingenious works, and whom I have mentioned as the trans-

BOOK II.

young man, who had recently obtained his licence as a preacher, had become known to Lord Kames, who judging very favourably of his taste and literary acquirements, prompted him to undertake a similar course of lectures to that which Mr Smith had delivered in Edinburgh. The scheme was equally successful; and on Mr Watson's removal to St Andrew's, a successor for the Lectureship on Rhetoric and Belles Lettres was earnestly sought by Lord Kames, and as fortunately found in the Reverend HUGH BLAIR, who had risen to merited distinction by the cultivation of pulpit eloquence, and who, in 1758, was appointed first minister of the High Church of Edinburgh, the most respectable situation for a clergyman under the national establishment. The merits of Dr Blair as a teacher of elocution were so conspicuous, that after lecturing for one year to a private audience, he was chosen Professor of Rhetoric by the Magistrates and Town-Council of Edinburgh; and in

Dr Hugh Blair.

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lator of *Cunningham's History of Great Britain*, (Appendix, No. I.)

1762, on a representation to his Majesty, setting forth the advantages of the institution as a branch of academical education, the King was pleased to endow a Professorship of Rhetoric and Belles Lettres in that University, and to appoint Dr Blair the first Regius Professor.

These *Lectures on Rhetoric* have been for several years known to the public. They were printed by their excellent author, in the latter period of his life, after he had retired from the discharge of his academical duties. They contain an accurate analysis of the principles of literary composition, in all the various species of writing; a happy illustration of those principles by the most beautiful and apposite examples, drawn from the best authors both ancient and modern; and an admirable digest of the rules of elocution, as applicable to the oratory of the pulpit, the bar, and the popular assembly. They do not aim at the character of a work purely original; for this, as the author justly considered, would have been to circumscribe their utility; neither,

BOOK II.

in point of style, are they polished with the same degree of care that the author has bestowed on some of his other works, as, for example, his *Sermons*: Yet so useful is the object of these lectures, so comprehensive their plan, and such the excellence of the matter they contain, that, if not the most splendid, they will perhaps prove the most durable monument of their author's reputation.

But not only is the public indebted to the patronage of Lord Kames for this valuable work, the Lectures on Rhetoric, and the consequent establishment of a permanent professorship by royal endowment for that useful branch of science: It appears by a letter from Dr Blair, that it was at the earnest instigation of the former he was induced to publish those *Sermons*, of which it is but the smallest merit, that they are a model for the eloquence of the pulpit.

"My Lord, *July* 2. 1777.

"I am very much obliged to you for the friendly communication you gave me by letter; the more so, that though the general

success of the book is far beyond my expectation, (a fourth edition being now gone to the press), yet I had learnt no particulars concerning its reception in London, except what I got in a letter from Mrs Montague, and by communication from Lord Mansfield, who is a great friend to it. Your Lordship may take to yourself the credit of it; for you was the first person who prompted, and for many years continued to impel the publication, when I would not believe that the public would listen to any thing which carried the title of sermons. I am in my old country quarters, &c.——I ever am, &c. HUGH BLAIR."

Professor John Millar.

Among those young men of talents whom the patronage of Lord Kames contributed to bring forward with advantage, and whose genius took its direction from his own literary and philosophical pursuits, was Mr JOHN MILLAR, who for many years sustained a very high reputation by his public Lectures in the University of Glasgow, on *Law* and *Government*. Mr Millar, the son of a clergyman, had been educated with a view

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to the Scottish Church; but having early conceived a dislike to that profession, and turned his attention to the study of the law, he was invited by Lord Kames to reside in his family, and superintend, in the quality of preceptor, the education of his son, Mr George Drummond-Home. Lord Kames found in young Millar a congenial ardour of intellect, a mind turned to philosophical speculation, a considerable fund of reading, and, what above all things he delighted in, a talent for supporting a metaphysical argument in conversation, with much ingenuity and vivacity. The tutor of the son became the pupil and companion of the father; and the two years before Mr Millar was called to the Bar, were spent, with great improvement on his part, in acquiring those enlarged views of the union of law with philosophy, which he afterwards displayed with uncommon ability in his academical lectures on Jurisprudence. The Professorship of Law at Glasgow having become vacant by the death of Mr Hercules Lindsay, Mr Millar offered himself a candidate; and, supported by the recommendation of Lord Kames and Dr Adam Smith, was elected

into that office in 1761; about sixteen months after he had put on the gown of an Advocate. The reputation of the University, as a school of jurisprudence, rose from that acquisition; and although the republican prejudices of Mr Millar gave to his Lectures on Politics and Government, a character justly considered as repugnant to the well-attempered frame and equal balance of our improved constitution, there were few who attended those lectures, without at least an increase of knowledge; or who have perused his writings *, without

* Professor MILLAR's writings, are, an Essay, entitled, *The origin of the Distinction of Ranks*,—An *Historical View of the English Government from the Settlement of the Saxons in Britain to the Accession of the House of Stuart*; and a *Continuation of the same Work from that period to the Revolution*; with some detached *Dissertations* illustrative of the succeeding History of the Constitution down to the present times. In the first of these works, *The Origin of the Distinction of Ranks*, the author is a disciple of the school of Montesquieu. The talent of generalizing appeared to him to be the characteristic of a philosophic inquirer into the history of Human Nature. Assuming it as a principle, that Man is every where, and in all situations, the same animal; that his conduct is influenced by general laws, and that no consider-

BOOK II. deriving from them much valuable information.

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able change in his condition happens, through accidental circumstances, or individual exertion, but that all arises necessarily, by an uniform and natural process, which can neither be effectually resisted, nor prematurely accelerated; he deduces from those general laws, and in conformity with those principles, a very ingenious and amusing delineation of the progress of society from barbarism to refinement. The recording of authentic facts, the display of historic truth, is much less an object with such writers, than ingenious argument, and plausible theory. Forgetting that it is only the most extensive knowledge of the actual history of man, in every age and country, that can enable us even to form a conjecture, where authentic history is silent; and dismissing entirely from their consideration those powerful springs of revolution, accident, and individual character, such philosophers are bold enough to determine not only what man ought to be, but to prove, by *à priori* reasoning, what in certain situations he has been, and in similar circumstances ever must be. It is to this sort of speculation that Mr Stewart, in his *Life of Smith*, has given the name of *Theoretical* or *Conjectural History*, and assigned to it a higher praise than perhaps is strictly its due. The writings of Lord Kames, particularly his *Sketches of the History of Man*, furnish many examples of it; but the most complete, and incomparably the most elegant specimen which the literature of this country affords of that sort of inquiry, is Dr FERGUSSON'S *Essay on the History of Civil Society*.

In Mr Millar's writings on the English Government, we observe the same spirit of system, and the same partiality to

hypothetical reasoning; though resting, as may be supposed, on a more solid foundation of facts; and the less dangerous in its tendency, as being every where capable of scrutiny from actual history. In his delineation of the later periods of our parliamentary history, Mr Millar seems to have been impressed with an unreasonable alarm, that the liberties of the subject are in perpetual danger from an increase of the influence of the Crown. Under our constitution, as new-modelled at the Revolution, and fenced by many salutary enactments since that æra, the event thus dreaded is utterly chimerical. The Crown can have no influence, but through an aristocracy, whose interests are essentially connected with the liberties of the people, and the prosperity of the State. On the other hand, the real danger, (as experience has but too well evinced), and therefore the just subject of alarm to every good citizen, is the increasing influence of the democratic branch of the constitution; and that ambition of power, felt by every turbulent spirit, even among the lowest orders of the people, which prompts to exert an active controul over his rulers, to interfere in the conduct of Government, and to resist its operations, whenever he fancies restraints, or dreams of grievances.——It was not from his venerable Master that the Professor drew his political opinions, or his Theories of Government. On the contrary, Lord Kames never failed to express his unqualified disapprobation of those doctrines; and the partial regard which he entertained for his former pupil, suffered, in the latter period of his life, on that account, a marked abatement.

See a detailed account of Professor Millar's Lectures, and of his Writings, in a Life of Mr Millar, by his nephew, JOHN CRAIG, Esq. prefixed to the last edition of *The Origin of Ranks, &c.*

CHAPTER II.

Lord Kames associated with the Trustees for Arts and Manufactures, &c.—His Abridgment of the Statute Law.—His views for the improvement of the Law.—His correspondence with Lord Hardwicke.—Historical Law-Tracts.—History of the Criminal Law.—History of Property.—Origin of Entails.—Principles of Equity.—Lord Hardwicke's opinion of that work.—Sir William Blackstone's ideas of Equity.—His censure of Lord Kames's work examined.

BOOK II.

Lord Kames associated with the Trustees for Arts and Manufactures.

In 1755, Lord Kames was appointed a Member of the Board of Trustees for Encouragement of the Fisheries, Arts and Manufactures of Scotland; and in the same or following year, he was chosen one of the Commissioners for the management of the forfeited Estates, annexed to the Crown, of which the rents were destined to be applied to the improvement of the Highlands and

Islands of Scotland *. In the discharge of these important trusts, which regulated the CHAP. II.

* The appointment of the *Board of Trustees* in Scotland, took its rise from the Treaty of Union; by the 15th article of which, it was stipulated, that a certain sum should be paid to Scotland as an *equivalent* for such part of the customs and excise-duties laid upon that kingdom as should be applied towards the payment of the national debt of England. This equivalent was to admit of a proportional increase, according to the increase of the said duties; and its application was directed to be made to certain purposes of public utility within the kingdom of Scotland. First, It was directed that all the public debts should thence be discharged: Secondly, It was appointed, that the sum of L. 2000 *per annum* should for seven years be applied to the encouragement of the manufacture of coarse wool; and after that period, "towards encou-"raging the fisheries, and such manufactures and improve-"ments in Scotland, as may most conduce to the general "good of the united kingdom." Commissioners at the same time were appointed for the management of that special fund, and their accounts declared to be open to the inspection of all the subjects. In the year 1727, on a representation from certain public-spirited gentlemen in Scotland, (Duncan Forbes, King's Advocate; Charles Areskine, King's Solicitor; Baron Sir John Clerk; Lord Royston, Lord Milton, and others), seconded by an application from the Convention of the Royal Boroughs of the kingdom, his Majesty King George I. issued letters-patent for the appointment of a *Board of Trustees*, with powers to follow out a regular plan, which they had previously digested, for the application of the fund above mentioned, in such manner as to render its dis-

BOOK II. expenditure of a very large annual revenue, in purposes of national utility, and particularly in the advancement of agriculture and

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tribution as generally beneficial as possible. The revenue under the management of these Trustees, who are always persons of the first respectability in the kingdom, and who officiate gratuitously, is at present above L. 7000 Sterling *per annum*; and it is believed no trust was ever more faithfully administered.

The *Board of Annexed Estates* was of a similar nature with respect to the chief purposes of its institution. After the Rebellion in 1745, the estates forfeited on that account were vested in the Crown, for the special purposes, (as declared in the act of annexation, 25th Geo. II. c. 41.). "of civilizing "the inhabitants on the said estates, and those of the other "parts of the Highlands and Islands of Scotland, the pro- "moting among them the Protestant religion, and govern- "ment, industry and manufactures, and the principles of "loyalty, and no other purposes whatever." It is declared by the same act to be the intention of Government "to erect "public schools on those estates in the Highlands and "Islands for the education of youth, and for instructing "them in agriculture and manufactures, and also to erect "and institute manufactories" from the produce of the said estates. The execution of those great public purposes was vested in Commissioners, many of whom were likewise members of the Board of Trustees for the Fisheries and Manufactures, and all of them men of high rank and character, who had no other reward of their services than the praise of faithfully executing a patriotic trust for the benefit of their country. The Board of Commissioners for the Annexed Estates, was of course superseded, by the restitution of those estates in 1784 to the heirs of the forfeiting persons,—a measure, on

manufactures in this part of the united kingdom, he was a zealous, and faithful servant of the public. He regularly attended the stated meetings of those Boards, generally officiating as Chairman, and taking a most active concern in all their proceedings. In the assignment of bounties, and the distribution of premiums to deserving manufacturers and artisans, or the discoverers of useful inventions, his conduct was uniformly actuated by a strict sense of duty. He was inflexible in resisting every claim which sought any other support than its own merits. In the midst of his professional and literary occupations, he was at all times easy of access to the meanest individual who had any application to make to those Boards; and was ready not only to advise, but to assist the ignorant and needy suitor, in bringing his claims fairly into view *.

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the part of Government, of the most generous and wise policy; and which reflects the highest honour on the humane and enlightened Statesman who first proposed and carried it into effect, the late HENRY DUNDAS, Lord Viscount MELVILLE.

* "I have frequently," said the late Dr JOHN WALKER, Professor of Natural History, a gentleman who knew Lord

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Those important branches of national industry had always occupied a large share of his attention, as is evident from his writings on a great variety of subjects of political economy. It was therefore equally for the public advantage, and gratifying to his own feelings, that he was now enabled to take an active part in reducing to practice many favourite topics of his speculations. Amidst

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Kames intimately), "visited him of a morning; and his "breakfast, which was at an early hour, was a very elegant "one, and usually a sort of levee;—those of his acquaint- "ance who came to ask his advice, or to talk to him on mat- "ters that interested them; young lawyers who walked with "him to the Court, (as the *Patroni* were attended of old at "Rome); and sometimes strangers, who had been re- "commended to his attention and patronage; and I sel- "dom missed finding in the lobby some tradesmen or "country men, who came to speak to him about applica- "tions they had made to the Board of Trustees, for boun- "ties, or premiums for new inventions, or to the Commis- "sioners of Annexed Estates: and all such applications "he listened to with the utmost attention. To do Mrs "Drummond justice, she never failed to remind him of those "poor petitioners and their claims; in which, to say the "truth, she took a very great interest herself. She was an "admirable woman, and seconded all her husband's useful "plans and intentions."

his private correspondence are many letters, which furnish proofs that his attention was alternately directed to almost every branch of agriculture and manufactures which could be beneficially adopted in Scotland;—the practice of new modes, and the introduction of new instruments of husbandry; the economizing of the labour both of men and cattle; the inclosure and culture of wastes and moors; the rearing of forest-timber; the draining and cultivation of moss-lands; the raising and spinning of flax; the growth and storing of winter-fodder for cattle; the improvement of the breed of sheep; and the introduction of the manufacture of coarse woollen-stuffs. In the promotion of these most useful purposes, his perseverance was superior to every obstruction arising from prejudices or indolence: his endeavours were ably and judiciously directed; and as his example tended powerfully to excite the emulation of others, so he may be said to have kindled the spirit of improvement in Scotland, and to have signally contributed beyond any other individual of his times, towards all that advancement in na-

BOOK II.

tional prosperity, which his country has manifested during the last half century *.

Abridgment of the Statute Law.

In 1757, Lord Kames published, in one volume 8vo, *The Statute Law of Scotland Abridged, with Historical Notes.* The ob-

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* One plan, which was proposed by Lord Kames as a member of the Board of Annexed Estates, deserves to be mentioned. The experiment failed to answer his expectation: but experiments in political economy, as in other sciences, are alike instructive as examples, when they succeed and when they fail. After the peace of 1763, when a considerable part of the army was reduced, the Commissioners entrusted with the management of the forfeited estates in Scotland, judged that a part of the revenue from those lands, which the liberality of Government destined for the improvement of the country, might be beneficially employed in the support of the disbanded soldiers: houses were built for them, and small portions of land assigned to them at a low rent. A very few turned out to be industrious and thriving tenants. These were chiefly such as had risen by their merit to the rank of sergeants, and had acquired habits of order and activity. The rest, accustomed to idleness and change of place, deserted their farms, and became vagabonds, thieves and beggars. Hence we see the importance of uniting habits of labour and industry with the military discipline, and the advantage not only to the community, but to the private soldiers themselves, of employing them in the intervals of actual service, and in time of peace, in public works, which may give them constant occupation.

ject of this work is to arrange and methodize the whole body of the Scottish Statutes, by reducing the contents of each act under a general title; so that the student or practitioner shall have in one view brought before him, and regularly digested, all that the Legislature has enacted upon the particular subject on which he desires information; and shall thus be saved the labour of searching at random through the whole mass of the statutes, and relieved from a task at all times troublesome, and which, in reality, few are able well to execute for themselves. This work goes back to the first fountains of the municipal law of Scotland, namely, the collection published by Sir John Skene, commonly known by the title of *Regiam Majestatem*, in four books; the *Quoniam Attachiamenta*; *Leges Burgorum*; *Iter Camerarii*; *Leges Forestarum*, &c.; and going on from their termination, gives a summary of the statute-law, as contained in the printed acts, down to the period of the Union with England. The order of arrangement was intended, as the author intimates in his preface, to be as

nearly as possible that of the *Dictionary of Decisions*; but it seems to have a greater resemblance to the plan of Cay's *Abridgment of the English Statutes*. The notes are valuable, as tracing with much ingenuity those principles, both of general jurisprudence and of the feudal usages, on which many of our statutory enactments are founded; but they do not enter so much into the history and antiquities of the country, as from their title of Historical Notes, the reader would be led to expect. This is a field which is still open to the labours of learned and ingenious men; and a most ample store of curious and useful information would be the fruit of such a research. There cannot indeed be a more pleasing exercise for the understanding, nor any that affords a greater scope for ingenuity, than the reciprocal elucidation of Law and of History, by the aids which they borrow from each other. Every law is a key to the history of the times in which it was framed; and may, in most instances, be traced up to the political emergency which required its enactment: And as, in many instances, a doubtful point of history derives light from

a careful scrutiny into the laws which were framed at that æra; so, on the other hand, an obscure or ambiguous passage in an ancient statute, may often be clearly explained by a due attention to the history of the period of its promulgation *.

The *Observations on the Statutes by Sir George Mackenzie*, though useful, as illustrating, from the opinions of our older lawyers, and the decisions of the Court, the obscurities of expression, and removing, by a commentary, those ambiguities of meaning which arise from the extreme brevity of the ancient statutes, contain but a scanty portion of historical information, and very little research into ancient usages. A work of this latter description was proposed by Lord Hailes; and a small specimen was

* "Tout homme de bon entendement," (says the sagacious ETIENNE PASQUIER), "sans voir une histoire, peut "presqu' imaginer de quelle humeur fût un peuple, lorsqu'il "lit ses anciens statuts et ordonnances; et d'un même juge- "ment peut tirer en conjecture quelles furent ses loix, voy- "ant sa manière de vivre."—*Recherches de la France*, liv. iv, ch. 1.

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printed, which that able lawyer and profound antiquary circulated among his literary acquaintance, with the view of inviting aid towards the composition of a work of the nature above alluded to; and of which his Lordship probably conceived the idea, from the *Observations on the Ancient English Statutes*, by Mr Daines Barrington; but being disappointed of that expected aid, he abandoned a design to which his own unassisted powers were completely adequate. ——The work of Lord Kames, though not accomplishing, nor perhaps altogether aiming at the same ends, has the merit of exhibiting an accurate and methodical abridgment of the statute law of Scotland; and it retains its rank among those books which are in daily use with the barrister and practitioner.

His views for the improvement of the Law.

A favourite design of Lord Kames, in many of his writings on the subject of the law, was to counteract, as far as was practicable with safety, a very general inconvenience, which has long been felt and avowed, and which the progress of commerce renders every day more sensible: I mean

that which arises from the circumstance of the United Kingdom of Great Britain being regulated by two different systems of law. From the situation of the two nations at the period of the Union, and the jealousy which the weaker most naturally entertained of being reduced to a degrading dependence on the stronger, it was resolutely contended for, and anxiously stipulated by the Treaty, that the former should retain her own laws, in all matters which concerned private rights; though a power of alteration by Parliament was allowed, where the evident utility of the subjects of Scotland rendered it necessary or expedient. In virtue of this reserved power, the statute *7mo Annæ*, c. 21. which, in its preamble, announces the design of improving the Union, by bringing about "an agreement, as near as may be, of the "laws of both parts of Great Britain," enacted some very wise and politic regulations respecting the treason laws, the methods of prosecution and trial for that crime, and the forfeitures and punishments subsequent to conviction. It appeared to Lord Kames, that the power of alteration thus wisely re-

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served by the Treaty of Union, might be most usefully extended to several other branches in which the law of Scotland differs from that of England, and where the former was, in his apprehension, capable of material improvement, by a nearer assimilation to the latter. In this view, having digested his ideas into the form of separate short Essays on certain branches of the law of Scotland, he was desirous of obtaining the opinion of the first authority in the law of England, on those subjects which he judged of mutual importance to the United Kingdoms. He sent his papers to the Earl of Hardwicke, then Lord Chancellor, who received them with warm approbation, and entered into the views of the writer with all that interest which suited his enlarged and liberal mind. The following letter from the Chancellor is dated from Wimple, October 17. 1754.

To Lord KAMES.

" MY LORD,

Correspondence with Lord Hardwicke.

" The letter of September 28th, with which you honoured me, should not have

him so long unacknowledged, if the usual resort to me at this place, and at this season, had not made it unavoidable. I am extremely obliged to your Lordship for this mark of attention to me; but more for that zeal which you express for improving and perfecting the union of the two Kingdoms, to which nothing can contribute more than an uniformity of laws. Those great men, who conceived and framed the plan of the Union; who felt *quantæ molis erat Britanniam condere gentem;* wished to attain it, but found it impracticable in the outset; but I have reason to think, that they never imagined near half a century would have passed, after their articles were established, without a greater advance being made towards it than has hitherto been attempted: —An evil which I have often lamented, and should rejoice to see remedied, because, without it, an incorporating union must be very defective. I am glad, that a person of your Lordship's abilities, and acknowledged skill, not only in the laws of Scotland, but also in the history and origin of those laws, has turned his thoughts to so interesting a

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subject; and from the specimen, which you have been so good as to communicate to me, conceive great hopes of the progress. Might it not be right to begin with the law relating to Crimes which concern the public policy and government of the United Kingdom, without which, the two parts of the island can hardly be said to be under one government? If to this were added the establishing of a *comitas jurisdictionum*, or the giving mutual faith and credence to the judgments and decrees of the sovereign courts in each country, as *res judicatæ*, it would be a good step. And, as to your land-rights, I should be for beginning with abolishing the strict Tailzies, at least *in futuro*; which not only differ from the genius of the English law, that abhors perpetuities, but are manifestly prejudicial to the national interest of Scotland; which is now rising in trade, and will, I hope, greatly increase in it. The taking so much of the lands *extra commercium*, is inconsistent with a commercial country. Upon the two last points I have frequently had the honour to discourse with the Duke of Argyll, and have

found his Grace possessed with large and just notions upon these subjects *.

" When I return to London, I will obey your commands, by putting your papers into my son Charles's hands, who is extremely obliged and flattered by the honourable mention which your Lordship is pleased to make of him. In the mean time, permit me to hint one thing upon what is said

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* A similar testimony to the enlightened views of that great Statesman, upon the same subject, is given in the following extract of a letter from Lord Mansfield to Lord Kames, dated 16th September 1773.—" Archibald, Duke of " Argyll, Lord Hardwicke and I had a serious deliberation " on the subject of Scotch entails. The Duke of Argyll " was the only man of quality and estate in Scotland, except " lawyers, I ever knew, whose judgment so far got the bet- " ter of his prejudices, as to make him wish to change the " system from perpetual, into temporary restraints. We " agreed that an abolition of entails ought not to be forced " upon the country, contrary to their own inclinations: but " to make the yoke gall the more, that no relief should be " given by Parliament to make them easier. I insisted for " an exception as to a general bill to give a power of leasing, " as a matter of infinite consequence to the whole communi- " ty. When the country wishes to break entails, the Par- " liament will most readily come into it; but I doubt the " general sense of the land proprietors continues still in fa- " vour of them."

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concerning a *grant of a rent-charge* having been anciently in use in the law of Scotland, though long since laid aside for infeftments of annualrent. Though this appears to be a curious discovery in the history of your law, yet your Lordship will pardon me for saying, that I don't see how it relates strictly to the subject of *land-securities*. In England, rents-charge were not made use of as securities for money lent, until in modern times they have been fraudulently applied to that purpose, in order to avoid the statutes against usury, by creating a yearly rent superior to the legal rate of interest, and making that rent subject to be re-purchased by the borrower, by repayment of the price, and satisfaction of the arrears. This invention our courts of law, as well as of equity, have always strongly discountenanced. I am, with great esteem, my Lord, your Lordship's most obedient humble servant,

HARDWICKE."

Historical Law-Tracts.

The hints conveyed in the foregoing letter were not thrown out in vain. Animated by the approbation of that great Judge, who presided over the law of our

sister kingdom, Lord Kames proceeded with alacrity in his intended purpose; and within less than two years from the publication of his *Abridgment of the Statute Law*, which appears to have interrupted for some time his researches on the subject of which we now treat, he gave to the world his *Historical Law-Tracts*, in one volume 8vo., printed at Edinburgh in 1759. In the preface to this work, after stating the advantages of tracing the progress of law historically *,

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* "Law, like geography, is taught as if it were a collection of facts merely: the memory is employed to the full, rarely the judgment. This method, if it were not rendered familiar by custom, would appear strange and unaccountable. With respect to the political constitution of Great Britain, how imperfect must the knowledge of that man be, who confines his reading to the present times! If he follow the same method in studying its laws, have we reason to hope that his knowledge of them will be more perfect? —— I have often amused myself with a fanciful resemblance of law to the river Nile. When we enter upon the municipal law of any country in its present state, we resemble a traveller, who crossing the Delta, loses his way among the numberless branches of the Egyptian river. But when we begin at the source, and follow the current of law, it is in that course not less easy than agreeable; and all its relations and dependencies are traced with no

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that is, from its earliest appearances in the ruder ages of a nation, through its progressive stages of improvement, as that nation advances in civilization and refinement, he informs his reader, that his principal object was, the improvement which the laws of his own country, and (with a becoming pride, he adds) those of England, are capable of deriving from a fair comparison of the institutions and usages of the two nations, in many of those particulars in which they differ *; a comparison which may pave the

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" greater difficulty than are the many streams into which " that magnificent river is divided before it is lost in the " sea."—*Preface to Historical Law-Tracts.*

* " I know no method more rational for studying law, " than a careful and judicious comparison of the laws of dif- " ferent countries. Materials for such comparison are richly " furnished by the laws of England and of Scotland. They " have such resemblance as to bear a comparison almost in " every branch; and they so far differ, as to illustrate each " other by their opposition. Our law will admit of many " improvements from that of England; and if the author be " not in a mistake, through partiality to his native country, " we are rich enough to repay with interest all we have oc- " casion to borrow. A regular Institute of the common law " of this island, deducing historically the changes which that

way for an interchange of those respective advantages which the one may be found confessedly to possess above the other.

History of the Criminal Law.

Adopting the hint of Lord Hardwicke, the author turns his attention first to the

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"law hath undergone in the two nations, would be a valuable "present to the public; because it would make the study of "both laws a task easy and agreeable. Such Institute, it is "true, is an undertaking too great for any one hand. But "if men of knowledge and genius would undertake particular "branches, a general system might in time be completed "from their works. This subject, which has frequently oc- "cupied the author's thoughts, must touch every Briton who "wishes a complete union; and a North-Briton in a peculiar "manner. Let us reflect but a moment upon the con- "dition of property in Scotland, subjected in the last resort "to Judges, who have little inclination, because they have "scarce any means, to acquire knowledge in our law. With "respect to these Judges, Providence, it is true, all along fa- "vourable, hath of late years been singularly kind to us. "But in a matter so precarious, we ought to dread a re- "verse of fortune, which would be severely felt. Our whole "activity is demanded, to prevent, if possible, the impend- "ing evil. There are men of genius in this country, and "good writers. Were our law treated as a rational science, "it would find its way into England, and be studied there "for curiosity as well as profit. The author, excited by this "thought, has ventured to make an essay, which, for the "good of his country, more than for his own reputation, he "wishes to succeed."—*Preface to Historical Law-Tracts.*

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History of the Criminal Law,—a subject confessedly of the highest importance, and which he has treated with consummate ability, and with a truly philosophic spirit of investigation.

The great principle of the criminal law is, the resentment of injuries, and the right which nature gives to repel a wrong by taking vengeance on the aggressor. The man who commits an injury against his neighbour, expects and fears the resentment of which his conscience tells him he has become the object; and if he be not a hardened offender, he suffers a punishment in his own remorse, till his crime is expiated, either by a voluntary atonement, or by the vengeance of the person whom he has injured. The right, which nature gave, of private revenge, it became necessary as society improved, to restrain within proper limits. We naturally over-rate our own wrongs; and passion, hurrying to excess, would observe no measure of justice in the retaliation. The interest of the community is concerned to preserve a due proportion between offences and their punishment;

and hence, as well as from another source, —the inability of the weak to redress their own injuries,—it became necessary, first to regulate by law, both the kind and the degree of the punishment according to the measure of the crime; and then to remove the right of inflicting it from the erring or the weak hand of the individual, to the arm of the State, at once more powerful and more impartial.

When this great step was once attained, it was an easy progress, that the State or body-politic, thus vested with the right of punishing for private injuries, should be considered itself as the party offended; for resentment is only justifiable in the party who sustains offence. But in a well ordered community, the State is really injured by the commission of a crime, which violates the public peace and security. Hence, a new principle finds its way, and enters as an ingredient into the improved system of criminal jurisprudence; and this is, the consideration of preserving the peace of society. This principle, though demonstrably only of a secondary nature, and taking place by

BOOK II. that gradual progress which we have above described, has, from the importance of its object, attained at length such a rank, as to attract an exclusive attention from some of the modern writers on the criminal law; who, losing sight altogether of its foundation in the resentment of injury,—a principle so universal and so deeply rooted, as to be common to every sentient being,—have assigned to it no other origin than political expedience, or the consideration of preserving the peace of the community, by restraining the commission of crimes. The first deviation thus made from the path of truth, every step leads us farther into error. The natural indignation consequent on the commission of crimes, instead of being, as it ought to be, the measure of the punishment, is, according to these writers, to be studiously excluded from the mind of the legislator, who is to look solely to the object of restraining similar crimes in future. Punishment, say they, is itself an evil; and to add punishment to crime, is only adding one evil to another; for if crimes could be repressed without the punishment of any criminal, so much evil would be prevented

as his punishment implies. Consequently punishment, in the mind of a wise Legislator and Judge, ought to have no reference to the degree of moral turpitude in the criminal. Will it be believed, that such opinions have for their supporters *Montesquieu*, *Beccaria*, *Voltaire*, and *Priestley* * ?

In the Essay on the History of the Criminal Law, Lord Kames, although he has with great ingenuity developed the true principle on which it is founded, and has traced it with precision through all its consequences, was not aware of the errors into which succeeding writers were to fall, in their speculations on this subject; otherwise, we cannot doubt that he would have bent his attention, in this Essay, to counteract and refute opinions which tend to involve this great branch of jurisprudence in

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* Montesquieu, *L'Esprit des Loix*, l. xii.; Beccaria *on Crimes and Punishments*; Voltaire's *Commentary on Beccaria*; Priestley's *Lectures on History and General Policy*, p. 348.

BOOK II.

inextricable confusion, and to abolish the only true criterion for proportioning punishments to crimes. He survived, it is true, the publication of several of those writings to which I allude; but his attention was not attracted to them, being engaged by topics of a different nature. This seems to impose a duty on his biographer, who, however unequal in other respects, can boast at least of one requisite for the task,—the zeal of a disciple to defend the rational doctrines of his master. The reader will, therefore, find in a separate article of the Appendix, a short Disquisition on the *Principles of Criminal Jurisprudence*, of which the object is the ascertainment of the true foundation of the penal law, and the detection of the errors of some modern writers on that important subject *.

History of Property.

Among the various topics handled by Lord Kames in the *Historical Law-Tracts*, there is none which affords more display of the ingenuity of the author, or his talent for

* See Appendix, No. X.

tracing legal institutions to their origin in the circumstances of society, than that Essay which he has entitled the *History of Property*. From the earliest idea of property among a barbarous people, where it is regarded as inseparable from possession,—a connexion, therefore, liable to be dissolved by the slightest accident,—he traces its gradual progress in acquiring strength and energy as society advances; so that the relation betwixt the subject appropriated and its owner, becomes at length indissoluble, unless by the consent of the latter to relinquish it, joined to its actual occupation by a new possessor. He shews, that the transmission of a man's estate to his heirs had this singular foundation, That the heirs making part of his family, were joint possessors even during his life: his death made no other change than that of depriving the family of one member; the right already vested remained; and so strongly was it inherent in the children, that, in the earlier periods of society, it could not be defeated by the father's deeds, unless with the consent of the heirs.

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The introduction of commerce, by rendering the power of alienation necessary, first legalized the transmission of property *inter vivos*: but it was a wide step from thence to the power of alienating *mortis causâ*. The latter right, however, arose in time, and was in truth, the fruit and consequence of the former: for that property is incomplete, of which a man cannot dispose at his death. The power of making a testament, says Plutarch, made every man the proprietor of his own goods.

The Scottish *Law of Deathbed* was not, as has been generally supposed, a regulation of policy for protecting the estate of the dying from the rapacity of the clergy: it was the natural consequence of that original joint right of property which was held to be vested in the heir during his father's life, and which restrained alienation to his prejudice. The right of the children to their *legitim* by the law of Scotland, is founded on the same principle.

Origin of Entails.

But the improvement of society gave rise to all those progressive alterations towards

the enlargement of the powers of the actual possessor. He becomes at length master of his estate, which he can alienate without restraint while he lives, and, with very little limitation, regulate its disposal after his death. There is no end to the thirst of power. It now became a prevailing passion with those who had too large a share of the gifts of fortune, to perpetuate this dominion over their property, and leaving nothing to the will of Providence, to usurp a controul and government of that property to the end of time. Hence sprung the unnatural and ruinous policy of *Entails of land.*

The feudal law, by allowing the vassal in possession, to establish, with consent of the superior, a series of heirs to succeed each other, furnished means to ambitious men of gratifying this inordinate passion to its utmost extent. It not only allowed a perpetual succession, but authorised every species of restraint on the possessing heir, against a diminution of the property by debts or alienations. But the feudal law in England soon dwindled to a shadow; and it was

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then found necessary to support the right of entailing on the basis of positive enactment, by the statute of Edward I. *De donis conditionalibus.* In Scotland, on the other hand, where the feudal law remained much longer, and still subsists in some of its branches, entails were quite common, with all their rigorous restraints and prohibitions, long before they were recognized by statute. It was the opinion of our old lawyers, that an entail could be made by private authority so as to bar alienation. Lord Kames examines this opinion, and demonstrates, that it rests on no solid foundation. Antecedently to statutory restriction, there can be no restraint on the free use of property, unless through the consent of the proprietor. An heir, by accepting of a fettered succession, virtually gives his consent to those restraints; but supposing him to break through the prohibitions and to sell the estate, it is evident, that whatever penalty he himself may incur by this act, the purchaser's title to the lands would be perfect and unchallengeable; for the entailer's will cannot affect the rights of any one but his heir. This was easily foreseen; but it was

imagined that the defect might be remedied by clauses introduced to void the right of the heir of entail who infringes its prohibitions. But this device, when strictly examined, is altogether nugatory. The heir's right remains good till an actual alienation has been made, and then a forfeiture of his right ensues: But by the deed of alienation, which preceded the forfeiture, the heir was divested, and the property had passed to a third party, beyond redemption. If so, of what avail are such clauses of forfeiture, to secure against alienations? A resolutive clause subjects the heir who alienates to a decree of forfeiture; but till this decree is pronounced, his right is good; his debts are effectual against the estate, and his creditors may attach it by adjudication, and sell it for their payment. It is demonstrable, therefore, that at common law no entail can bar alienations, or secure its own duration. To obtain these ends, positive statute was necessary; and at the very period when, in our neighbouring country, entails, from a full experience of their mischievous tendency, had become defeasible by the simplest expedients, the Scottish Legislature

gave them, by the act 1685, that force and efficacy which was wanting to them by the common law; and thus sanctioned by statute the most destructive policy that ever obtained in a civilized country, whether we consider its consequences to national morals, to national industry, or even to domestic happiness.

The subject of Scotch entails seems to have engaged the attention of Lord Kames in a remarkable degree. He has resumed the consideration of it at great length in a subsequent work, his *Elucidations respecting the Law of Scotland*; and he has treated the topic, in a moral and political point of view, in an Appendix to his *Sketches of the History of Man*. It appears that he had entertained a hope that the period would soon arrive when the general feeling of the mischiefs arising from the prevalence of this narrow spirit, so hostile to national prosperity, and to every species of improvement, would excite to a remedy by the interference of the Legislature; and in this view, he had endeavoured to prompt that great Judge with whom we have seen he was already in correspondence, to take an

active part in bringing about a reformation which he thought essential to the interests of his native country. To accomplish this end, he had thought of different plans, but had finally rested in the three following articles, which he proposed as the object of Parliamentary enactment: First, that the Scottish statute 1685, c. 22. be repealed, with respect to all future operations: Secondly, that entails already made and completed shall continue effectual to such substitutes as exist at the date of the new act proposed; but shall not benefit any substitute born after it: Thirdly, that power be reserved to every proprietor, after the act 1685 is at an end, to settle his estate upon what heirs he thinks proper, and to bar those heirs from altering the order of succession; these powers being inherent in property at common law. At the same time, as he foresaw that these regulations would avail little, while a power remained of evading them by the operation of a deed of trust, he proposed to add to the preceding articles this essential enactment, That no trust-deed, directing or limiting the succession of heirs to a land-estate, shall be ef-

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fectual beyond the life of the heirs in existence at the time.

On communicating this scheme to the Earl of Hardwicke, he received from him the following letter:

"*Wimple, in Cambridgeshire,*

"*October* 21. 1759.

"My Lord,

"Though I am extremely obliged to your Lordship for communicating to me so clearly and *in extenso*, the new plan for reforming your entails, yet I chose to defer thanking you for it, till I should have so fully considered, and formed an opinion upon it, as might have excused me in laying it before you. I have at last found myself unable to do so at this place, for want of some books and papers necessary to be consulted, which are in London. However I can already, with much pleasure, assure your Lordship, that I like this plan much better than the former, because it goes much nearer to the root of the evil, by prohibiting entails for the future; and limiting

the operation of old entails to persons in *esse*. This has a tendency to relieve the public, as well as the exigencies of private families, to which the other plan was too much confined. One thing I beg leave to suggest upon the article relating to entails to be made in time coming;—That, as at present advised, I apprehend some temperament will be necessary to make it go down; I mean, by leaving the subjects of Scotland at liberty to make entails to continue as long as they are permitted by the law of England; and that is, by allowing a restraint of alienation to the extent of any number of lives whatsoever in being; which is analogous also to the alteration proposed to be made in your old entails by this new plan. The forensic cant-expression for this with us is, That there can be no mischief, because all the candles are lighted up at once. But I fear your great landed men will cry out murder, if an attempt should be made to restrain them farther than we are restrained in England, where perpetuities are so much abhorred.

"Upon the general question, nothing can

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be stronger and more convincing, than the reasonings which your Lordship has put together; and though I do not, at present, pretend to give any strict opinion on the particular scheme, I shall apply myself to the examination of it upon my return to town. In one thing you do me too much honour, and I must beg to be excused in it. To take this affair into my own hands, and carry it through in Parliament, is out of, and beyond my sphere. I am in no office*, and consequently not in a situation to bear the weight of it; especially after the load, which, though with very upright and well-meant intentions towards Scotland, I have formerly taken upon myself. But my assistance shall never be wanting, either to this, or any other proposition for her real good, though I am convinced it must be so conducted, as to take many of your princi-

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* The Chancellor HARDWICKE resigned in 1756, after holding that high office for a period of twenty years, with consummate ability, wisdom, and rectitude. The Seals, on his resignation, were put into commission for a year. Sir Robert Henley was appointed Lord Keeper in 1757, and Lord Chancellor in 1764.

pal and best-intentioned countrymen along with us.——I am with great esteem, &c.

HARDWICKE."

It has been probably owing to the want of that co-operation alluded to in the conclusion of this letter, while a great proportion of our men of rank, fortune and parliamentary influence, have a personal interest in maintaining entails on the footing on which they stand at present, that a reform so truly beneficial has hitherto been delayed, and will probably be postponed, till the evil has attained to so enormous an extent, that there shall be a failure of credit to supply the demands of increasing luxury, and commerce itself, in spite of the ardour and industry of the people, shall begin to stagnate, from that sole cause, in this part of the United Kingdom.

The *Historical Law-Tracts* have undergone several editions, and are deservedly high in the public esteem. They are among the few works which unite law with philosophy and the study of human nature; and they have accordingly received the

BOOK II. praise, not only of juridical authors, but of the writers on politics and morals, both of our own and foreign countries. In a letter of Mr David Hume's, quoted in Mr Stewart's *Life of Adam Smith*, there is indeed a passage, in which the writer seems to think rather lightly of the work in question: "I "am afraid" (says he) "of Lord Kames' "*Law-Tracts*. A man might as well think "of making a fine sauce by a mixture "of wormwood and aloes, as an agree- "able composition by joining metaphy- "sics and Scotch law. However, the "book, I believe, has merit; though few "people will take the pains of diving into "it." But whoever peruses the letter from which that passage is taken, will clearly perceive, that Mr Hume is in one of his playful moods; that he means nothing less than to give a serious opinion on any one topic of which he is treating; and that the whole letter is a banter from beginning to end. ——The ingenious writer from whom I have quoted the above whimsical remark of Mr Hume on the *Historical Law-Tracts*, has himself given a very strong testimony to the merits of that work, and in terms not of

general eulogium, but with that discriminating precision which is the result of a perfect acquaintance with the subjects treated *. CHAP. II.

In prosecution of that enlarged idea of introducing an uniformity of principle into Principles of Equity.

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* "The greater part of politicians, before the time of "Montesquieu, contented themselves with an historical state- "ment of facts, and with a vague reference of laws to the "wisdom of particular legislators, or to accidental circum- "stances, which it is now impossible to ascertain. Montes- "quieu, on the contrary, considered laws as originating "chiefly from the circumstances of society; and attempted "to account, from the changes in the condition of mankind, "which take place in the different stages of their progress, "for the corresponding alterations which their constitutions "undergo. It is thus, that in his occasional elucidations of "the Roman Jurisprudence, instead of bewildering himself "among the erudition of scholiasts and of antiquaries, we "frequently find him borrowing his lights from the most re- "mote and unconnected quarters of the globe, and com- "bining the casual observations of illiterate travellers and "Navigators into a philosophical commentary on the history "of law and of manners. The advances made in this line "of inquiry since Montesquieu's time have been great. "Lord KAMES, in his *Historical Law-Tracts*, has given "some excellent specimens of it; particularly in his Essays "on the *History of Property*, and of *Criminal Law*; and "many ingenious speculations of the same kind occur in the "works of Mr MILLAR."—*Account of the Life and Writings of Adam Smith, L.L.D. by Professor* DUGALD STEWART.

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the general jurisprudence of the State, which should counteract, as far as possible, the inconveniences arising from two systems of law regulating the separate divisions of the United Kingdoms, Lord Kames had planned another work, which, in the following year 1760, he gave to the public, under the title of *Principles of Equity* *.

As in every civilized country, a great part of the judicial proceedings in the courts of law is regulated by equity, it is presumable, that these proceedings rest on certain fixed maxims, and are not altogether capricious, or dependant on the opinion or conscience of the Judge; otherwise there would be no uniformity in the decisions of such tribunals, nor could men rely with confidence on the fulfilment of many of those engagements into which they enter with each other, and of which equity and not strict law is the basis. It was therefore the author's object, in this work, to treat Equity as a science, and capable, as such, of be-

* Printed at Edinburgh, in 1760, in a folio volume.

ing reduced to principles; to examine its nature, as distinct from the common or municipal law, and as suppletory to the defects, and corrective of the rigour of the latter; to define the boundaries of equity as a rule of judgment, and settle the distinct provinces of a court of law, strictly so called, and a tribunal possessing equitable powers; to ascertain the principles of equity, as founded in the human constitution, and assign to each distinct principle its due weight and relative importance; and finally, to illustrate the doctrines of the science thus explained and methodized, by examples of adjudged cases, drawn from the practice of the Courts both of Scotland and of England.

The author traces historically the rise of the Courts of Equity in each of the United Kingdoms. The municipal law, imperfect even at present, was extremely limited in the ruder periods of our history. Both in England and in Scotland, all causes of an extraordinary nature, and to which no statutory enactment was found applicable, were

reserved for the decision of the King in Council. A great variety of causes, founded on duties of the law of nature, and for which no general rules of judgment can easily be devised, were likewise, from necessity, subjected to the same paramount tribunal, whose function was to determine the case *secundum bonum et æquum*. In England, this burden, soon became too heavy for the Sovereign, who therefore devolved it upon his principal law-officer, the Chancellor, to be executed by him, with the aid of skilful men, in his Court of Chancery. *Equity*, therefore, was understood to be the province of the Chancery, as the municipal and statute-law of the common courts, which hence were said to judge by the rules of the *Common Law* of the land. In Scotland, the privilege of the Sovereign to judge in his Council, in all extraordinary cases to which the common law did not apply, was never expressly delegated or transferred, as in England, to a particular tribunal; but was gradually assumed by the Supreme Court of the Kingdom, which, in the plenitude of its functions, was necessarily obliged to resort to equity, from the imperfection of

the common law, and the very narrow limits within which the written or statute-law is comprised.

The powers of a court of equity, originally confined to the supplying of the defects of the common law, were, by a very natural progress, gradually extended to the equally important function of mitigating its rigours. There are many particular cases in which it is found that *summum jus est summa injuria*; and the former remedy, as is well observed by Lord Bacon, would be altogether imperfect without the latter. "*Habeant curiæ* "*prætoriæ potestatem tam subveniendi con-* "*tra rigorem legis quàm supplendi defec-* "*tum legis. Si enim porrigi debet reme-* "*dium ad quem lex præteriit, multò magis* "*ad quem vulneravit* *."

Having traced the origin of courts of equity, and marked the progressive enlargement of their jurisdiction, the author pro-

* *De Aug. Scient.* l. viii. aphor. 85.

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ceeds to examine a general question of fundamental and primary importance, Whether a court of equity ought to be governed by any general rules? He acknowledges that the idea of a perfect court of this nature, implies a tribunal where each particular case shall be determined upon its own merits, according to what is just, equal and salutary, without regard to general rules: But such a tribunal must have angels for its judges, and not human beings, liable to prejudice and error. Hence the necessity of rules, to preserve uniformity of judgment in matters of equity, as in those of common law. Such rules, it is true, must often produce decrees, that in equity, as in common law, are materially unjust. But this inconvenience must be tolerated to avoid a greater; that of rendering judges arbitrary, and their decrees so fluctuating, that the public could never trust to them as to a rule of conduct. On this point, the writer's opinion is supported by a great authority: "It "was upon just grounds of reason," (says Lord Bacon), "that the *album* of the Præ-"tor came into use; that is, the table in "which he published the rules and *formulæ*

" according to which he was to administer " justice. And after this example, the " judges in our courts of equity should, as " far as it is practicable, lay down for themselves certain rules, and make them known " to the public. For, as that law is the " best which leaves least to the discretion " of the judge, so that judge is the best who " takes the least discretion to himself *."

In treating of the boundaries which separate the distinct provinces of equity and the common law, the author justly remarks, that the former begins where the latter finds its limits: That all those duties among individuals which cannot be enforced by positive enactment, because they arise from connexions independent of consent, are proper-

* " Non sine causâ in usum venerat apud Romanos Album Prætoris, in quo præscripsit et publicavit quomodo ipse jus dicturus esset. Quo exemplo judices in curiis prætoriis, regulas sibi certas (quantùm fieri potest) proponere, easque publicè affigere debent. Etenim optima est lex, quæ minimùm relinquit arbitrio judicis, optimus judex qui minimùm sibi."—*De Aug. Scient.* lib. viii. cap. 3. aphor. 46.

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ly within the province of a court of equity; as are likewise all those various incidents which modify the obligation of consensual contracts, occasionally extending, diminishing, and even putting an end to them altogether; incidents which, as being unforeseen, could not be provided for, and therefore can have no weight in a court of common law, which looks only to the declared will and letter of the covenant.

Courts of equity and of common law remaining separate in England, while the powers of both are united in the Supreme Civil Court of Scotland, a question of some difficulty and importance hence naturally arises, namely, whether it be expedient that the common law and equity should be committed to the same, or to different tribunals. Lord Bacon has declared himself explicitly in favour of a separation of jurisdictions *.

* Apud nonnullos receptum est, ut jurisdictio, quæ decernit secundum æquum et bonum, atque illa altera quæ procedit secundum jus strictum, iisdem curiis deputentur; apud alios autem, ut diversis: omninò placet curiarum separatio. Neque enim servabitur distinctio casuum, si fiat commixtio jurisdictionum; sed arbitrium legem tandem trahet."—*De Aug. Scient.* lib. viii. cap. 3. aphor. 45.

With becoming deference to this great authority, Lord Kames delivers a contrary opinion. The principal argument against an union of the jurisdictions is, that in a court endowed with those double powers, the distinction betwixt common law and equity is apt to be obliterated and lost; and consequently there will be no certain rule of decision; while one judge will rest his opinion on the law, and another on the equity of the case. On the other hand, a powerful argument for the union of the jurisdictions, is its expediency in preventing tedious and expensive litigation. Where there is a separation of courts, the litigant is at a loss where to bring his action, and must previously determine, what is often a very difficult point, namely, whether the case is governed by common law or by equity. This error cannot be corrected but by a circuitous and expensive process. A defendant prosecuted at common law, cannot avail himself in that court of the best founded plea in equity, but must seek his redress by a counter action. On balancing these opposite disadvantages, the author pertinently remarks, that the inconvenience of blending law and equity, which

BOOK II. forms the objection to the union of jurisdictions, may be obviated by an institute or digest, which shall accurately distinguish the boundaries; but the inconvenience arising from the separation of jurisdictions admits of no remedy. To form such an institute, is the object of the work now before us.

The *Treatise on the Principles of Equity* attracted very general attention in both parts of the kingdom, and was universally allowed the praise of great ingenuity, and of profound legal erudition. Its merits, however, as a system were variously appretiated. In favour of the plan of the work, and of its general principles, as detailed in the very elaborate Introduction to the book, there cannot be a stronger testimony than that of the great Judge to whom I have had occasion lately to refer, I mean the Earl of Hardwicke; whose letter on the subject, though of considerable length, I think it necessary to insert entire; both because it would suffer extremely from any abridgment, and because in many parts it forms a counterpoise to the opinions of another great authority

in the law, Sir William Blackstone, who has thought proper to censure the work of Lord Kames, as inculcating an erroneous idea of the nature of equity, and of the powers of an equitable tribunal;—a censure which, on a fair and candid consideration of the matter, I trust will appear to be unfounded.

The Earl of HARDWICKE *to Lord* KAMES.

"MY LORD,

"*Grosvenor Square, June* 30. 1759.

Lord Hardwicke's opinion of *Principles of Equity.*

"It has happened to me again, as it did in the former instance of our correspondence, that I have not been able to acknowledge as I ought your Lordship's obliging communication of the *Introduction to the Treatise upon Equity*, till the session was over. I ought indeed to be one of the men of leisure, but it generally falls out, whilst the Parliament is sitting, that business enough is cut out for me. As your performance is the fruit of deep consideration, the respect of consideration and attention was due to it, and the honour you do me by calling for my thoughts, gives you a right

to demand it. I have read over your papers more than once with care, and not without much approbation of the ingenuity and industry of your researches and reflections. The field is wide, and to range the whole is beyond my strength; but I will beat a piece of ground here and there, to try if I can start any thing that may be worth your Lordship's pursuing.

"Your Lordship has treated very properly upon the rise of the jurisdiction of equity in England; a topic of much controversy, and hitherto unsettled. The general idea which you have flung out concerning it, appears to me to be very judicious, and that, in the original formation and division of courts, causes of an extraordinary nature, to be determined, not by stated rules of law, but by an arbitrary, though sound discretion, were reserved to the Sovereign and his Council. It was natural that it should be so; for as all power of judicature was derived from the Crown, so much as *that* did not grant out or commit to others, must remain there; with this difference, that some have been of opinion, that it was re-

served to the King in his great Council, that is, the Parliament. CHAP. II.

"It is now many years ago that I read over a MS. treatise of one of our most able lawyers and antiquarians, my Lord C. J. Hale, concerning *Jurisdiction*, from which I transcribed some passages on this subject in his own words. The great character of the author may give your Lordship a curiosity to see them.

"In one part he has these words: "There "were many petitions referred to the Coun- "cil (meaning either the *Privatum Concilium* or *Legale Concilium Regis*), from "the Parliament, sometimes by the answers "to particular petitions, and sometimes "whole bundles of petitions in Parliament, "which, by reason of a dissolution, could "not be there determined, were referred, "in the close of the Parliament, sometimes "to the Council in general, and sometimes "to the Chancellor; and this I take to be "the true original of the Chancery's juris- "diction in matters of equity, and gave rise "to those multitudes of equitable causes

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" to be there arbitrarily determined." A little lower he adds: " Touching the equi-
" table jurisdiction (in Chancery), though in
" ancient times no such thing was known,
" yet it hath now so long obtained, and is
" so fitted to the disposal of lands and goods,
" that it must not be shaken, though in
" many things fit to be bounded and re-
" formed. Two things might possibly give
" it original, or at least much contribute to
" its enlargement. 1*mo*, The usual com-
" mitting of particular petitions in Parlia-
" ment, not there determined, unto the de-
" termination of the Chancellor, which was
" as frequent as to the Council; and such
" a foundation being laid for a jurisdiction,
" it was not difficult for it to acquire more.
" 2*do*, By the invention of uses, (*i. e.* trusts),
" which were frequent and necessary, es-
" pecially in the times of dissension, touch-
" ing the Crown. In these proceedings the
" Chancellor took himself to be the only
" dispenser of the King's conscience, and
" possibly the Council was not called either
" as assistants or co-judges."

" There seems to have been a natural

reason how this jurisdiction, arising originally from such references, came to be devolved into the hands of the Lord Chancellor, rather than of any other branch or member of the Council. The Chancery is with us the grand *Officina Justitiæ*, out of which all original writs, (*brieves*, as they are called in Scotland), issue under the Great Seal, returnable in the courts of common law to found proceedings in actions, competent to the common law jurisdiction. The Chancellor, therefore, was the most proper judge, whether upon any petition so referred, such a writ could be framed and issued by him, as might furnish an adequate relief to the party; and if he found the common law remedies deficient, he might proceed according to the extraordinary power committed to him by the reference, *Ne curia Regis deficeret in justitiâ exhibendâ*. I don't know whether a certain law-book, published here not long ago, has reached Scotland, I mean the *Reports* of Sir John Strange, late Master of the Rolls. If it has, your Lordship will find, in the first volume, an argument of mine, in a remarkable cause of Sir Robert Walpole's, which passes under the name

CHAP. II.

of *The King against Hare and Man.* It was made when I was a very young Advocate, before I was Solicitor-General, but it is correctly reported; for I remember Sir John Strange borrowed my papers to transcribe, so that the faults in it are all my own. In arguing that cause, which turned upon a critical exception to the return of a writ of *scire facias* in Chancery, I found, or at least fancied it to be necessary to shew, that all the various powers of that Court were derived from, or had relation to the Great Seal; and as I had not then seen my Lord Hale's manuscript, endeavoured to prove, that the equitable jurisdiction exercised by the Chancellor, took its rise from his being the proper officer to whom all applications were made for writs or brieves, to ground actions at common law; and from many cases being brought before him, in which that law would not afford a remedy, and thereby being induced, through necessity or compassion, to extend a discretionary one.

"If this account of the original of the jurisdiction in equity in England be historically true, it will at least hint one answer

to the question, How the Forum of Common Law and the Forum of Equity came to be separated with us? It was stopt at the source, and in the first instance; for if the case appeared to the Chancellor to be merely of equity, he issued no original writ, without which the Court of Common Law could not proceed in the cause, but retained the cognizance of it to himself.

"Whether the jurisdiction of common law and equity ought to be committed to the same, or to different courts, is a question of another nature, and is very properly said by you to be no less intricate than important. It is a question of policy and legislation, depending upon general reasons of civil prudence and government. You have treated it with great modesty; and for my own part, I am fearful of being influenced by some prejudice or bias contracted from long habit, and the usages of my own country. But I must confess I have always been of the opinion delivered by the great and sagacious author you have cited *, That

* Lord Bacon.—*De Aug. Scient.* lib. viii. c. 3. aphor. 45.

BOOK II. to keep the two jurisdictions separate is the most eligible. I agree, that in considering this point upon different principles, there is room for different determinations. All the arguments drawn from the ease and convenience of the suitors, the preventing vexation and delay, and saving of expence, seem to conclude for uniting them in the same court. On the other hand, the arguments drawn from the necessity or utility of preserving the rules of law entire, and not leaving it in the power of Judges to new-mould and vary those rules at discretion, by insensibly blending law and equity together, hold for keeping them divided. These reasons regard the constitution of the Government, and have always appeared to me to outweigh the others, inasmuch as what is of general and public consequence, ought to be preferred to private or particular convenience. My Lord Bacon says, *Si fiat commixtio jurisdictionum, arbitrium tandem legem trahet*, and I think I have in some instances seen that effect produced. No wonder, then, that a people jealous of their liberties, and fond of their laws, and therefore desirous to bind the hands of their Judges by

stated rules, should lean against so dangerous an institution. Besides the tendency it would have to make the Judges of the common law lawmakers in matters of property, I think, in time, it would have an effect of the like kind upon cases of crime, which affect life and liberty. In most countries, the genius of the civil and criminal law is the same; and the rules both of the one and of the other are analogous. Arguments are often drawn from the rules in civil cases to influence the decision of criminal ones, where doubtful questions arise. Suppose, then, for a moment, that in such a mixed jurisdiction, the Judges have let in certain principles of equity to become rules of law, though not originally founded in the common or statute law; suppose also, that in tract of time, the commencement of this change is forgot and lost; the points thus established will pass for original common law, and be argued from to govern decisions in criminal matters; in which the most obvious points that occur to the mind may be questions of evidence. If this had been allowed in England, I fear the common law

BOOK II. would have sunk long ago, and every thing been resolved into the *arbitrium boni viri.*

"The mention of this most liberal description of equitable jurisdiction, the *arbitrium boni viri*, puts me in mind to say a few words upon another question very properly stated by you, *Whether a court of equity ought to be governed by any general rules?*

"It is impossible to answer this question in a satisfactory manner without running into several distinctions.

"Some general rules there ought to be, for otherwise the great inconvenience of *Jus vagum et incertum* will follow; and yet the Prætor must not be so absolutely and invariably bound by them, as the Judges are by the rules of the common law; for if he were so bound, the consequence would follow which you very judiciously state, that he must sometimes pronounce decrees, *which would be materially unjust, since no rule can be equally just in the application to a whole class of cases, that are far from being the same in every circumstance.*

"This might lay a foundation for an equitable relief even against decrees in equity, and create a kind of superfœtation of courts of equity.

"This consideration brings to my mind a cause which happened in the Court of Chancery very early in my first attendance on Westminster-Hall as a student, which occasioned some mirth as well as attention. The decision is not reported in any book, and my memory does not serve me to state all the circumstances of it. In the law of England, there is a process called an *Audita Querela*, which is a suit at common law, whereby a defendant may be relieved after and against a judgment or execution, upon particular equitable circumstances, but limited and bound by certain rules. A defendant in a judgment had, by some fraudulent contrivance, artfully brought his case within some of those rules, and sued his *Audita Querela*; against which the plaintiff in the judgment was advised he could make no defence at law, and brought his bill in Chancery to be relieved against the *Audita*

BOOK II. *Querela.* It happened, that both my Lord Cowper, then Lord Chancellor, and the Master of the Rolls, were called away upon public business, and Mr Justice Eyre, a strict common lawyer, who had never practised at all in a court of equity, sat in Chancery that day, by virtue of the standing commission, to hear causes in the absence of the Chancellor. The counsel for the defendant in Chancery, who was plaintiff in the *Audita Querela*, thought themselves sure of victory, when so extraordinary a cause as a bill in Chancery, to be relieved against a common law suit of equity, came to be heard before a common law judge; and the counsel for the plaintiff were proportionably in despair. But the judge found that the plaintiff in Chancery had the merits on his side; and yet the court of common law must, by reason of their general rules established, have given judgment against him, and therefore he decreed an injunction to stay the proceeding in the *Audita Querela*. This decree was, upon a rehearing, affirmed by my Lord Cowper, not without some observation upon the singularity of the case.

"I am apprehensive that if general rules were to be fixed invariably to govern a court of equity, many cases would happen similar to this old story of the *Audita Querela*.

"In our courts of equity general rules are established, as far as it has been judged the nature of things would admit, especially since the time of my Lord Keeper Coventry, who was very able, and contributed a great deal towards modelling the Court of Chancery. In the construction of trusts, which are one great head of equity, the rules are pretty well ascertained. So they are in cases of redemption of mortgages, which makes another great branch of that business. But as to relief against frauds, no invariable rules can be established. Fraud is infinite, and were a court of equity once to lay down rules, how far they would go, and no farther, in extending their relief against it, or to define strictly the species or evidence of it, the jurisdiction would be cramped, and perpetually eluded by new schemes, which the fertility of man's invention would contrive.

BOOK II.

"To this fertility of invention, and luxuriant growth of fraud, is owing the increase of causes in courts of equity, which has been observed in modern times; and not to that encroachment upon the common law, which my Lord Bacon, in his 43d aphorism, calls an overflowing of the banks in prætorian courts. *Maximè omnium interest certitudinis legum, ne curiæ prætoriæ intumescant et exundent in tantum, ut prætextu rigoris legum mitigandi, etiam robur et nervos iis incidant, aut laxent, omnia trahendo ad arbitrium.*

"The judges who have presided in Chancery since the Revolution, have, for the most part, endeavoured with much anxiety, to preserve the boundaries of the two jurisdictions of common law and equity from being confounded; and have sent forth their injunctions to stop the course of the common law, with a cautious and sparing hand. But new discoveries and inventions in commerce have given birth to new species of contracts; and these have been followed by new contrivances to break and elude them, for which the ancient simplicity

of the common law had adapted no remedies; and from this cause, courts of equity, which admit of a greater latitude, have, under the head, *adjuvandi vel supplendi juris civilis*, been obliged to accommodate the wants of mankind.

"Another source of the increase of business in courts of equity, has been the multiplication and extension of trusts. New methods of settling and encumbering land-property have been suggested by the necessities, extravagance, or real occasions of mankind. But what is more than this, new species of property have been introduced, particularly by the establishment of the public funds, and various transferable stocks, that required to be modified and settled to answer the exigencies of families, to which the rules and methods of conveyancing provided by the common law would not ply or bend. Here the liberality of courts of equity has been forced to step in and lend her aid.

"I cannot put an end to this conversa-

BOOK II.

tion with you, without taking notice of one point, which is introduced *obiter*, and not essential to the plan of your work; I mean what is delivered concerning universal benevolence.

"Nothing can be more just than the proposition laid down by you, "That the connexions whic h excite benevolence differ "widely in degree, from the most remote "to the most intimate; and that benevolence is excited in a just proportion to "the degree of the connexion."—I have not the *Essays on Morality and Natural Religion*, to which you refer, just now at hand to resort to; but it is a plain consequence from this proposition, that the degrees of duty will differ according to the nearness or remoteness of the objects: However, I cannot help wishing that you would reconsider your conclusion, *That the doing good to one of our own species, merely as such, never is a duty.* Mankind is one great family derived from the same common parents. From hence arises a natural connexion; and people are too apt to neglect the obligation of doing good in prac-

tive, to want to be taught where it ceases in doctrine and precept. I know you have too much candour to be offended with the freedom of this observation *. I am, with the greatest esteem, my Lord, your Lordship's most obedient humble servant,

HARDWICKE."

On the foregoing letter, it is deserving of particular remark:

1*mo*, That in speculating on the origin of the jurisdiction of the Chancery in England in matters of equity, a subject of much uncertainty, and where conjecture must come in the place of positive evidence or authority, the notion of Lord Kames coincides very nearly with that entertained by Sir Matthew Hale.

2*do*, That on the important question, Whether the jurisdictions of common law and equity should be committed to the

* See Lord Kames's notions on this subject explained *postea*, at Book IV. Chap. III. near the end.

BOOK II. same, or to separate courts, Lord Hardwicke, though inclining, (from a natural prejudice, as he himself suspects), to the opinion of Lord Bacon, and to the policy of his own country, where the jurisdictions are separated, admits the force of every reason advanced by Lord Kames for their union; and ingenuously confesses, that there are partial advantages and inconveniences in either system; so that there is fairly room for a difference of sentiment on the subject.

3tio, The whole strain of Lord Hardwicke's observations tends to shew, (in conformity with the opinion of Lord Bacon), That a court of equity, as well as a court of common law, ought to be subjected to some general rules, for the purpose of establishing an uniformity of proceedings, and a consistency in its judgments; though the rules of the former neither can nor ought to be so fixed and invariable as those of the latter, but must leave a latitude, in many cases, of determining solely according to conscience, and the *arbitrium boni viri*; a position explicitly assented to by the au-

thor of the *Principles of Equity*, and exemplified through the whole of his work; although perhaps he is disposed to admit a greater number of those rules than his enlightened correspondent, or indeed any of the English lawyers, would deem necessary or expedient.

Sir William Blackstone's ideas of equity, and courts of equity.

But the very ingenious author of *Commentaries on the Laws of England*, has, in the course of a desultory treatment of the subject of equity, and the equitable powers of the Court of Chancery, in different parts of his work, thrown out a censure of the opinions of Lord Kames, as giving erroneous ideas both of the nature of equity, as distinguished from strict law, and of the powers of a court of equity, and particularly of the English tribunal specially vested with that jurisdiction.

As the fundamental proposition on which the work of Lord Kames is framed, is, That Equity is a science of which it is possible to ascertain the principles, and to methodize the rules and doctrines, Sir William Blackstone has, in the outset, positively denied

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this primary proposition; though, in the sequel of his discussion, he admits it in the most direct terms, and builds upon it as the foundation of his own reasonings. "Equity," (says this author, vol. i. Introd. § 2.) "is "thus defined by Grotius, "The correc- "tion of that wherein the law, by reason of "its universality, is deficient."—"Equity "thus depending," (he adds), "essentially "upon the particular circumstances of each "individual case, *there can be no establish- "ed rules and fixed precepts of equity laid "down, without destroying its very essence, "and reducing it to a positive law.*" Again, "What equity is, and *how impossible in its "very essence to be reduced to stated rules*, "hath been shewn in the preceding sec- "tion." *Ibid.* Introd. § 3. *in fine.*

Yet the same author, in his third volume, when treating *ex professo* of the proceedings in courts of equity, has adopted the very opposite of this proposition which he has thus deliberately laid down, and is now, all at once, a keen antagonist of his former opinion, and of all who support it. In opposition to the opinion of Selden, that a court

of equity is not bound by rules or precedents, but acts from the opinion of the Judge, founded on the circumstances of every particular case, he lays it down, that, "on the contrary, the system of our courts "of equity *is a laboured connected system, "governed by established rules, and bound "down by precedents, from which they do "not depart*, although the reason of some of "them may perhaps be liable to objection." Book iii. c. 27.——Again, in a subsequent part of the same chapter: "If a court of "equity were still at sea, and floated upon "the occasional opinion which the Judge "who happened to preside might entertain "of conscience in any particular case, the "inconvenience that would arise from this "uncertainty would be a worse evil, than "any hardship that could follow from rules "too strict and inflexible.—But a set of "great and eminent lawyers, who have suc-"cessively held the Great Seal, have by de-"grees erected the system of relief admini-"stered by a court of equity into a regular "science, which cannot be attained without "study and experience, any more than the "science of the law: but from which, when

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"understood, it may be known what remedy "a suitor is entitled to expect, and by what "mode of suit, as readily, and with as much "precision, in a court of equity as in a court "of law."—Vol. iii. p. 440.

Of the above manifest contradictions, the reader shall be left to form his own judgment.

His censure of Lord Kames's work on Equity examined.

But the learned author of the *Commentaries on the Laws of England* has, in various parts of his disquisition on this subject, made particular reference to the doctrines of Lord Kames, and intimated his dissent from them in strong terms. Let us briefly examine on what foundation.

"Every definition," (says Sir William Blackstone, Book iii. c. 27.), "or illustra-"tion to be met with, which draws a line "between the two jurisdictions, by setting "law and equity in opposition to each "other, will be found either totally erro-"neous, or erroneous to a certain degree. "Thus, in the first place, it is said, (Lord "Kames, *Principles of Equity*, 44.), that it

"is the business of a court of equity in "England to abate the rigour of the com-"mon law. But no such power is contend-"ed for."—And here the author gives some examples where the common law is rigorous, as in the case of bond-creditors, whose debtor has devised away his real estate, and where no redress can be given by a court of equity, to the creditor against the devisee, &c. But allowing that there are some examples of the rigour of common law, which are beyond the remedy of a court of equity, does it therefore follow in the abstract, that it is not the business of a court of equity to abate the rigour of the common law? What are we to think of so strange an opinion, delivered in contradiction to the authority of every writer who has treated of the subject of equity, as distinguished from strict law*?

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* "*Jus prætorium est quod prætores introduxerunt, adjuvandi vel supplendi, vel corrigendi juris civilis gratiâ, propter utilitatem publicam.*"—L. 58. § 1. Ff. *De Justitia et Jure.*—"*Prætor planè modo emendat et quasi impugnat jus civile; detrahit plurima de jure civili, corrigit jus civile.*" CUJACII *Comment. in tit. De Justitia et Jure*, l. 8.—"*Habeant curiæ*

BOOK II.

Sir William Blackstone proceeds: "2. It "is said, (Lord Kames, *Principles of Equity*, 177.), that a court of equity determines according to the spirit of the rule, "and not according to the strictness of the "letter: But so also does a court of law.— "There is not a single rule of interpreting "laws, whether equitably or strictly, that "is not equally used by the judges in the "courts both of law and equity."—*Ibid.* vol. iii. p. 430. Now granting that the learned author were right in this opinion, that a court of law followed a rule of equity in the interpretation of the laws, it would not refute the proposition, that a court of equity determined according to the spirit, and not according to the strictness of the letter: it would only shew that such were likewise the powers and practice of a court of law.

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prætoriæ, (Lord Bacon is here speaking expressly of the proper constitution and province of the courts of equity in England), *potestatem tam subveniendi contra rigorem legis, quàm supplendi defectum legis. Si enim porrigi debet remedium ei quem lex præteriit, multò magis ei quem vulneravit.*"—*De Aug. Scient.* l. viii. c. 3. aphor. 35.

The same author proceeds: "It has been "said, that a court of equity is not bound "by rules or precedents, but acts from the "opinion of the Judge, founded on the cir- "cumstances of every particular case; (Sel- "den, *Table Talk, tit. of Equity*), whereas, "the system of our courts of equity, is a "laboured connected system, governed by "general rules," &c.—*Ibid.* vol. iii. p. 432. The former notion is no doubt the opinion of Selden; and was likewise, as we have seen, the opinion of this learned author himself, in the first volume of his *Commentaries*, Introduction, § 2. and § 3. But it never was the opinion of the author of the *Principles of Equity*, whose work is an elaborate system built upon the very converse of that proposition.

With respect to Sir William Blackstone's own notions on this subject, the general scope of his reasoning seems to conclude, That there is no ground for drawing any distinct line of separation betwixt the provinces of law and equity, either as forming different rules of judgment in any matters of

judicial controversy, or as influencing the practices of separate courts in England or any where else: but that every tribunal of law is virtually and essentially a court of equity. How far he is well founded in this doctrine, so contrary, as we have seen, to the sentiments of those great Judges I have before referred to *, whose reason for a separation of the provinces of law and equity, was the just apprehension, that if they were united, the law would become altogether arbitrary and dependent on fluctuating opinion, *arbitrium tandem legem trahet*, I forbear farther to examine. I shall only remark, that the learned writer, in his strictures on the opinions of Lord Kames, has at least given proof of an imperfect acquaintance with the work which he has censured, and has mistaken altogether its very end and object; which, instead of enlarging the jurisdiction of a court of equity, and making its practice "the result of mere arbitrary "opinion, or of a dictatorial power riding "over the laws of the land," is calculated to restrain that jurisdiction within positive

* Bacon and Lord Hardwicke.

limits, to make its decisions the result of settled principles, and render equity not the tyrannical controller, but the friendly assistant and coadjutor of positive law.

I do not mean, however, in what I have said on this subject, (perhaps at too great a length), to hold forth the Treatise on the *Principles of Equity* as exhibiting a perfect system, or as meriting the praise of a faultless work. I am far from thinking so. I am sensible, that, as the author himself acknowledges, in a new undertaking, (which this certainly was), there must be many omissions; and I am aware, that a strict examination may detect in it even errors of doctrine, and mistakes in point of reasoning*. But with every abatement which the

* A remarkable example occurs in the author's reasoning with regard to the *Lex Rhodia de jactu* (Book i. Part i. art. 2.) where, in opposition to every other writer, and indeed to the most obvious rules of equity, he maintains, That the proprietors of the goods saved by throwing overboard a part of the cargo to lighten the ship in a storm, must contribute to make up the owner's loss, not in the proportion of the respective values of the goods saved, but in the proportion of their

BOOK II.

rigour of judgment may demand, the work will remain a monument of the genius and learning of its author, and will afford no mean instruction both to the rational student of jurisprudence, and the intelligent judge in a court of equity.

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respective weights: so that the owner of a large diamond, or of a bank-bill of L. 10,000 value, ought not to pay a thousandth, perhaps a millionth part of the salvage to be paid by the owner of a log of wood, or a bar of iron.——In this example, as in a few others, the metaphysical subtlety of the author has perverted his judgment.

CHAPTER III.

Lord Kames's various literary occupations.—"Introduction to the Art of Thinking."—Correspondence with Dr B. Franklin.

CHAP. III.

Lord Kames' various literary occupations.

THE active mind of Lord KAMES, earnestly occupied for some years, as we have seen, by studies and researches connected with his profession, appears now to have sought a relaxation for a while, by turning to pursuits of a nature altogether different in their object, yet sufficiently interesting to give full employment to his comprehensive powers, and a grateful exercise to his ruling passion, the desire for the improvement of mankind. A strong sense of the parental duties led him to turn his attention to the education of his children, as soon as he judged the infant mind capable of receiving elementary

instruction, the passions beginning to exert their influence, so as to require a judicious guidance and controul, and a dawning of the moral sense sufficient to lay the foundation of just impressions of right and wrong, vice and virtue.

It occurred to him, that the faculty of reflecting and forming general observations, —a faculty weak and imperfect in the state of infancy, is capable of great improvement by judicious culture. It was his opinion, that this, though a most essential branch of education, is seldom cultivated with due care. "Nature," he observes, "in her "course, begins with particulars, and as- "cends gradually to what is general and "abstract. But nature is ill seconded in "the ordinary course of education. We "are first employed, it is true, in languages, "geography, history, natural philosophy, "subjects that deal in particulars. But at "one bound, we are carried to the most "abstract studies: logics, for example, and "metaphysics. These indeed give exer- "cise to the reasoning faculty; but it will "not be said, that they are the best quali-

"fied for initiating a young person in the "art of reasoning. Their obscurity and in- "tricacy unfit them for that office. Here "then is evidently a void, which must be "filled up, if we wish that education should "be successful. To improve the faculty of "abstracting, and gradually lead us from "particular facts to general propositions, "the tender mind ought at first to be exer- "cised in observations of the simplest kind, "such as may easily be comprehended. To "that end, the subject ought by all means "to be familiar: and it ought also to be "agreeable and instructive *."

Art of Thinking.

These purposes Lord Kames had it in view to accomplish by the composition of an elementary work, which should be suited to the minds of children when reason first

* Lord Kames was of Montagne's opinion. "La philosophie a des discours pour la naissance des hommes, comme pour la décrépitude. Prenez les simples discours de la philosophie; sçachez les choisir et traiter à point, ils sont plus aisés à concevoir qu'un conte de Boccace. Un enfant en est capable au partir de la nourrice, beaucoup mieux que d'apprendre à lire ou à écrire."—MONTAGNE, liv. i. ch. 25.

BOOK II.

begins to open, and should be calculated to serve at once the purposes of improving the understanding, and cultivating just notions of morality. This little work, which he found to be attended with some advantage in the education of his own children, he justly deemed it improper to confine in its object, while it might be extended to a purpose of general utility; and in 1761, he published it in a small volume, with the title of *Introduction to the Art of Thinking*. It is divided into two parts; the former containing a series of moral and prudential maxims, and the latter a regular illustration of those maxims, by stories taken either from real history or fictitious narratives.

The plan of this work is judicious; the execution is in general adequate to its purpose, and the matter and style sufficiently suited to the capacity of children, at that stage of life, when the power of reflection first begins to display itself. The maxims are partly original, and partly borrowed from ancient and modern moralists: and they are for the most part very happily illustrated by historical anecdotes, apologues

and fables. It must be owned, however, that the author seems occasionally to have deviated from his plan, by adapting his maxims and examples to a more advanced period of education; and in a few instances, it may perhaps be doubted, whether some of his observations on life and manners, though just in themselves, and consonant to human nature, be altogether so well calculated for the purpose of useful instruction in a very early period of life, as the author perhaps imagined, and assuredly intended them to be *.

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* Of those maxims which are too refined for the capacity of children, the following are examples:

"He who incessantly vaunts of his probity and honour, "and swears to gain belief, has not even the art of counter-"feiting."—P. 7.

"It is harder than is commonly thought to dissemble "with those we despise."—P. 11.

"Generally we speak ill of others rather out of vanity "than malice."—P. 13.

"The good humour of some, is owing to an inexhaustible "fund of self-conceit."—P. 13.

"Self-conceit is none of the smallest blessings from hea-"ven."—*Ibid.*

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The book, however, is upon the whole well adapted to its principal end, the cultivating in the minds of children the habits of reflection, and of forming general observations; and though now little known, or

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"You may sooner expect a favour from him who has al-
"ready done you one, than from him to whom you have
"done it."—P. 16.

"Something to be wished like home that is not home,
"like alone that is not alone, found in a friend only, or in
"his house."—P. 17.

From maxims such as the following, a child can derive no useful instruction:

"The least coldness or incivility from our betters, makes
"us hate them: but they need not be in pain, the first
"smile sets all to rights."—P. 37.

"To women that have been conversant in the world, a
"gardener is a gardener, and a mason a mason: to those
"who have been bred in a retired way, a gardener is a man,
"and a mason is a man."—P. 30.

"Women engage themselves to the men by the favours
"they grant: Men disengage themselves from the women
"by the favours they receive."—P. 32.

"In the first passion, women have commonly an affection
"for the lover; afterwards they love for the pleasure of
"loving."—P. 19.

"To shew precipices on all sides, is the best way to bring
"weak persons into your path."—P. 59.

overlooked amidst the great number of elementary works and treatises on education which have of late years issued from the press, has obtained its just commendation from those best qualified to estimate its merits. It has, among others, the suffrage of Dr BENJAMIN FRANKLIN, who thought very favourably both of the design and execution: "In your truly valuable *Art of* "*Thinking*," (says that judicious writer, in a letter to the author), "you sow thick in "the young mind the seeds of goodness "concerning moral conduct.—Permit me "to say, that I think I never saw more "solid useful matter contained in so small "a compass; and yet the method and ex- "pression so clear, that the brevity occa- "sions no obscurity."

Correspondence with Dr Benjamin Franklin.

Dr Franklin, who, together with his eldest son, made a visit to Scotland in the end of the autumn 1759, had received particular attentions from Lord Kames, and had passed with him some days at his country seat in Berwickshire. This laid the foundation of a friendship and correspond-

ence between these two eminent men, which subsisted during their joint lives.

In return to a request made by Lord Kames to obtain from Dr Franklin copies of his printed writings, the latter thus addresses him:

"*London, January* 3. 1760.

"My dear Lord,

"You have been pleased kindly to desire to have all my publications. I had daily expectations of procuring some of them from a friend to whom I formerly sent them, when I was in America, and postponed writing to you, till I should obtain them; but at length he tells me he cannot find them. Very mortifying this to an author, that his works should so soon be lost! So I can now only send you my *Observations on the Peopling of Countries*, which happens to have been reprinted here; *The Description of the Pennsylvania Fire-place*, a machine of my contriving; and some little Sketches that have been printed in the *Grand Magazine*, which I should hardly

own, did I not know that your friendly partiality would make them seem at least tolerable.

CHAP. XI.

" How unfortunate I was, that I did not press you and Lady Kames more strongly to favour us with your company farther. How much more agreeable would our journey have been, if we could have enjoyed you as far as York.—We could have beguiled the way by discoursing of a thousand things that now we may never have an opportunity of considering together; for conversation warms the mind, enlivens the imagination, and is continually starting fresh game, that is immediately pursued and taken, and which would never have occurred in the duller intercourse of epistolary correspondence. So that whenever I reflect on the great pleasure and advantage I received from the free communication of sentiments in the conversations we had at Kames, and in the little agreeable rides to the Tweed-side, I shall for ever regret our premature parting.

" No one can more sincerely rejoice than I do, on the reduction of Canada; and this,

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not merely as I am a Colonist, but as I am a Briton. I have long been of opinion, that *the foundations of the future grandeur and stability of the British empire lie in America*; and though, like other foundations, they are low and little seen, they are nevertheless broad, and strong enough to support the greatest political structure human wisdom ever yet erected. I am therefore by no means for restoring Canada. If we keep it, all the country from St Lawrence to Misissippi, will in another century be filled with British people; Britain itself will become vastly more populous, by the immense increase of its commerce; the Atlantic sea will be covered with your trading ships; and your naval power thence continually increasing, will extend your influence round the whole globe, and awe the world!—If the French remain in Canada, they will continually harass our colonies by the Indians, impede, if not prevent their growth; your progress to greatness will at best be slow, and give room for many accidents that may for ever prevent it.—But I refrain, for I see you begin to think my no-

tions extravagant, and look upon them as the ravings of a mad prophet.

"Your Lordship's kind offer of Penn's picture is extremely obliging. But were it certainly his picture, it would be too valuable a curiosity for me to think of accepting it. I should only desire the favour of leave to take a copy of it. I could wish to know the history of the picture before it came into your hands, and the grounds for supposing it his. I have at present some doubts about it; first, because the primitive Quakers used to declare against pictures as a vain expence; a man's suffering his portrait to be taken, was condemned as pride; and I think to this day it is very little practised among them. Then, it is on a board; and I imagine the practice of painting portraits on boards, did not come down so low as Penn's time; but of this I am not certain. My other reason is, an anecdote I have heard, viz. That when old Lord Cobham was adorning his gardens at Stowe with the busts of famous men, he made inquiry of the family, for a picture of William Penn, in order to get a bust formed from it,

BOOK II. but could find none: That Sylvanus Bevan, an old Quaker apothecary, remarkable for the notice he takes of countenances, and a knack he has of cutting in ivory strong likenesses of persons he has once seen, hearing of Lord Cobham's desire, set himself to recollect Penn's face, with which he had been well acquainted; and cut a little bust of him in ivory which he sent to Lord Cobham, without any letter or notice that it was Penn's. But my Lord, who had personally known Penn, on seeing it, immediately cried out, "Whence comes this? It "is William Penn himself!" and from this little bust, they say, the large one in the gardens was formed.—I doubt, too, whether the whisker was not quite out of use at the time when Penn must have been of the age appearing in the face of that picture.—And yet, notwithstanding these reasons, I am not without some hope that it may be his; because I know some eminent Quakers have had their pictures privately drawn and deposited with trusty friends; and I know also that there is extant at Philadelphia a very good picture of Mrs Penn, his last wife. After all, I own I have a strong de-

sire to be satisfied concerning this picture; and as Bevan is yet living here, and some other old Quakers that remember William Penn, who died but in 1718, I would wish to have it sent me carefully packed in a box by the waggon, (for I would not trust it by sea), that I may obtain their opinion. The charges I shall very cheerfully pay; and if it proves to be Penn's picture, I shall be greatly obliged to your Lordship for leave to take a copy of it, and will carefully return the original *.

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* In Grainger's *Biographical History of England*, there is no mention of any portrait of William Penn. In Broomley's *Catalogue of Engraved British Portraits*, an engraving of him is mentioned, as done by J. Hall, in 1775, from a bust at Philadelphia, which has probably been copied from that in the gardens at Stowe, of which we have here the history. In an historical painting by B. West, Esq. representing the Treaty with the Indians at the foundation of the colony of Pennsylvania, of which there is an excellent engraving by Hall, William Penn is introduced together with all his family; but it is probable the likeness has been taken from one of those busts, of which Bevan's ivory sculpture furnished the model.——The picture here mentioned, was sent to Dr Franklin, according to his wish; and it was never returned.——An engraving probably from Hall's print, is to be found in the *European Magazine* for April 1790.

"My son joins with me in the most respectful compliments to you and to Lady Kames.—Our conversation till we came to York, was chiefly a recollection of what we had seen and heard, the pleasure we had enjoyed, and the kindnesses we had received in Scotland, and how far that country had exceeded our expectations. On the whole, I must say, I think the time we spent there, was six weeks of the *densest* happiness I have met with in any part of my life: and the agreeable and instructive society we found there in such plenty, has left so pleasing an impression on my memory, that did not strong connexions draw me elsewhere, I believe Scotland would be the country I should choose to spend the remainder of my days in.—I have the honour to be, with the sincerest esteem and affection, my dear Lord, &c. &c.

B. FRANKLIN."

In the conversations alluded to in the foregoing letter, the subject of the relative interests of Britain and her American colonies had been frequently discussed; and Lord Kames, impressed with some of the

sentiments which he had heard his friend deliver, had requested him to digest them in order, and give them to the public.

In a letter, dated London 3d May 1760, Dr Franklin thus writes to him:

"My dear Lord,

"I have endeavoured to comply with your request in writing something on the present situation of our affairs in America, in order to give more correct notions of the British interest with regard to the colonies, than those I found many sensible men possessed of. Inclosed you have the production, such as it is. I wish it may in any degree be of service to the public. I shall at least hope this from it, for my own part, that you will consider it as a letter from me to you, and take its length as some excuse for its being so long a-coming *.

. . . . . .

"I am now reading with great pleasure

* The Remarks here alluded to, are printed in the late edition of Dr Franklin's works, vol. iii. p. 89.

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and improvement your excellent work, *The Principles of Equity*. It will be of the greatest advantage to the Judges in our colonies, not only in those which have Courts of Chancery, but also in those which, having no such courts, are obliged to mix equity with the common law. It will be of the more service to the colony Judges, as few of them have been bred to the law. I have sent a book to a particular friend, one of the Judges of the Supreme Court in Pennsylvania.

"I will shortly send you a copy of the chapter you are pleased to mention in so obliging a manner; and shall be extremely obliged in receiving a copy of the Collection of *Maxims for the Conduct of Life*, which you are preparing for the use of your children. I purpose likewise a little work for the benefit of youth, to be called the *Art of Virtue*. From the title I think you will hardly conjecture what the nature of such a book may be. I must therefore explain it a little. Many people lead bad lives that would gladly lead good ones, but know not *how* to make the change. They

have frequently *resolved* and *endeavoured* it; but in vain, because their endeavours have not been properly conducted. To exhort people to be good, to be just, to be temperate, &c. without *shewing* them *how* they shall *become* so, seems like the ineffectual charity mentioned by the Apostle, which consisted in saying to the hungry, the cold, and the naked, Be ye fed, be ye warmed, be ye clothed, without shewing them how they should get food, fire, or clothing. Most people have naturally *some* virtues, but none have naturally *all* the virtues. To *acquire* those that are wanting, and secure what we acquire, as well as those we have naturally, is the subject of *an art*. It is as properly an art as painting, navigation, or architecture *. If a man would become a painter,

* That there is an art of virtue, is not a new or singular opinion of Dr Franklin's. Some of the wisest of the antients entertained the same notion. Plato in his Dialogue entitled *Meno*, examines the question ἀ διδακτον ἡ ἀρετη, and resolves it in the affirmative; first proving virtue to be a science, because it teaches the wisest conduct in life, and thence concluding, that whatever admits of rules may be taught and learnt: and there is a good deal to the same purpose in his Dialogue

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navigator, or architect, it is not enough that he is *advised* to be one, that he is *convinced* by the arguments of his adviser, that it would be for his advantage to be one, and that he resolves to be one, but he must also be taught the principles of the art, be shewn all the methods of working, and how to acquire the habits of using properly all the instruments; and thus regularly and gradually he arrives by practice at some perfection in the art. If he does not proceed thus, he is apt to meet with difficulties that discourage him, and make him drop the pursuit. My *Art of Virtue* has also its instruments, and teaches the manner of using them. Christians are directed to have faith in CHRIST as the effectual means of obtaining the change they desire. It may, when sufficiently strong, be effectual with many: for a full opinion, that a Teacher is infinite-

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entitled *Protagoras*. Plutarch has likewise a short Essay to prove "Οτι διδακτον ἡ ἀρετη. And Cicero seems to convey the same opinion when he says *Consuetudo exercitatioque capienda, ut boni ratiocinatores officiorum esse possimus*: And indeed the whole of his Treatise *de Officiis* is nothing but an *Art of Virtue*.

ly wise, good, and powerful, and that he will certainly reward and punish the obedient and disobedient, must give great weight to his precepts, and make them much more attended to by his disciples. But many have this faith in so weak a degree, that it does not produce the effect. Our *Art of Virtue* may, therefore, be of great service to those whose faith is unhappily not so strong, and may come in aid of its weakness. Such as are naturally well-disposed, and have been carefully educated, so that good habits have been early established, and bad ones prevented, have less need of this art; but all may be more or less benefited by it. It is, in short, to be adapted for universal use. I imagine what I have now been writing will seem to savour of great presumption: I must therefore speedily finish my little piece, and communicate the manuscript to you; that you may judge whether it is possible to make good such pretensions. I shall at the same time hope for the benefit of your corrections *.——I am &c.

B. FRANKLIN."

* It does not appear that the little work here mentioned was ever given to the public.

CHAPTER IV.

"Elements of Criticism."—Origin and Progress of Criticism.—Mr Harris's notions on that subject examined.—Aristotle's Critical and Rhetorical Writings.—His Art of Poetry.—His Art of Rhetoric.—Demetrius Phalereus on Elocution.—Longinus.—Lord Kames's plan original, but the way paved by former writers.—Dr Hutcheson's Essay on Beauty and Virtue.—Akenside's Pleasures of Imagination.—Other writers, Gerard, Burke, &c.—Scope and Object of "Elements of "Criticism."—Advantages of such Disquisitions.—The Author's method of Discussion.—Examples.—Utility of the work, independent of the rectitude of its theoretical Opinions.—Certain disadvantages of this sort of Criticism.—Nature of the Author's Taste.—Works proceeding from the school of Lord Kames.—Campbell's Philosophy of Rhetoric.—Mr Alison's Essay on Taste.—Other works in Philosophic Criticism.

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Elements of Criticism.

IT appears from the letters of several of Lord Kames's correspondents, and in particular from those of Dr Franklin and Mr Hans Stanley, that he had for several years

meditated an extensive work on the Principles of Criticism. In treating this subject, it was his design to proceed altogether on a new plan, and to adopt a mode of investigation different from that which had been followed by any preceding writers, either among the ancients or moderns: a design, therefore, in which, I think, he has the merit of originality, and is justly entitled to the praise of being the inventor of a science; I mean that which has been with propriety termed *Philosophical Criticism*. As this may at first sight appear a bold assertion, it is necessary to be at some pains in illustrating and supporting it.

In speculating on the moral and intellectual nature of man, a subject which seems to have been the favourite study of Lord Kames in every period of his life, and in reflecting on the various sources of our enjoyments, it had often occurred to him as a matter of surprise, that ingenious and able men had never turned their attention to investigate, in a truly philosophical manner, the *causes* of that pleasure which is derived from the productions of the fine arts of

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Poetry, Painting, Sculpture, Music, and Architecture: in other words, to trace the rules of criticism to their true principles in the constitution of the human mind, and the nature of the passions and affections.

Origin and progress of Criticism.

It is an obvious remark, that works of genius in the fine arts existed before the knowledge or the discovery of any rules for the formation of such works, and that the first critics drew the laws of their art from a nice examination of the productions of the poets, painters, sculptors, musicians and architects, which were found to have given pleasure to the general taste. But it is an observation equally worthy of notice, though perhaps it will not be so readily assented to, that not only those first critics, but all who have followed them in the same department, down to modern times, had, till very lately, founded their rules of criticism on no other basis than authority, or the practice of the poets, painters and other artists; and that not one of those critics had ever thought of ascending but a single step higher in the inquiry, by putting the following question, Whether those rules are agreeable to human

nature, and have a solid foundation in the moral constitution of man?

Mr Harris's notions on that subject examined.

The ingenious Mr HARRIS of Salisbury, in his zeal for vindicating to his favourites the ancients, every important discovery connected with philosophy, has, it is true, endeavoured to shew, that this species of criticism, justly termed *philosophical*, is to be traced up to the works of Aristotle; and that the principles of the science, which he seems to think is properly the invention of that philosopher, are to be found in his *Poetics* and *Art of Rhetoric*. But a very few words will suffice to prove, that what has been termed Philosophical Criticism by Mr Harris, and which he professes to find in the works of Aristotle, falls altogether short of that science to which we now allude; and that in reality Aristotle has not in any part of his writings, where criticism is the subject, made the slightest attempt to found the rules of that art on any other basis than authority; or dropped the most remote hint of their real foundation, namely, the consonance of those rules to the immu-

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table principles of our nature, or the laws of the human constitution.

Let us attend to Mr Harris's opinions on the subject, as we find them in his *Philological Inquiries*.

"Antient Greece," (says he), "in its "happy days, was the seat of liberty, of "sciences, and of arts. In this fair region, "fertile of wit, the Epic writers came first; "then the Lyric; then the Tragic; and, "lastly, the Historians, the Comic writers, "and the Orators; each in their turn de- "lighting whole multitudes, and command- "ing the attention and admiration of all. "Now, when wise and thinking men, the "subtile investigators of principles and "causes, observed the wonderful effects of "these works upon the human mind, they "were prompted to inquire, *Whence this "should proceed?* for that it should happen "*merely from chance*, they could not well "believe. Here, therefore, we have the "rise and origin of criticism, which, in its "beginning, was a deep and philosophical "search into the primary laws and ele-

" ments of good writing, as far as they " could be collected from the most appro- " ved performances. In this contemplation " of authors, the first critics not only at- " tended to the powers and different spe- " cies of words; the force of numerous " composition, whether in prose or verse; " the aptitude of its various kinds to va- " rious subjects; but they farther consider- " ed that which is the basis of all, that is to " say, in other words, the *meaning* or the " *sense*. This led them at once into the " most curious of all subjects; the nature " of man in general; the different charac- " ters of men, as they differ in rank or age, " their reason and their passions; how the " one was to be persuaded, the others to be " raised or calmed; the places or reposito- " ries to which we may recur, when we " want proper matter for any of these pur- " poses. Besides all this, they studied sen- " timents and manners; what constitutes a " work *one*; what a *whole* and *parts*; what " the essence of probable and even natural " fiction, as contributing to constitute a " just dramatic fable. Much of this may " be found in different parts of Plato. But

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"Aristotle his disciple, who may be called "the systematizer of his master's doctrines, "has, in his two Treatises of *Poetry* and "*Rhetoric*, with such wonderful penetra- "tion, developed every part of the subject, "that he may be justly called *The Father* "*of Criticism*, both from the age when he "lived, and from his truly transcendent ge- "nius. The criticism which this capital "writer taught, has so intimate a corre- "spondence and alliance with philosophy, "that we can call it by no other name than "that of *Philosophical Criticism* *."

Aristotle's critical and rhetorical writings.

Here we have, indeed, a positive opinion of Mr Harris, that the criticism taught by ARISTOTLE was that which, from its alliance with philosophy, may be called *Philosophical Criticism*. But though distinguished by the same name, it remains to be inquired, whether that species of criticism taught by Aristotle, be in reality the same science, to which we now allude, under the title of Philosophical Criticism, and which consists

* HARRIS's *Philological Inquiries*, Part. i. p. 6.

in founding the rules of judgment in the fine arts upon the principles of human nature. We must not allow ourselves to be misled by an identity of terms: it is things and not names to which we must attend in order to form sound opinions. Now, a very few observations on those principles of criticism contained in Aristotle's two Treatises on *Poetry* and *Rhetoric*, will enable us to determine this preliminary question.

His Art of Poetry.

Mr Harris allows, that the ancient critics, when inquiring into the causes of the pleasure which the mind receives from the works of taste, in order thence to lay down the rules of good writing, sought for them in the most approved performances; that is, they held that to be a law of composition, which they found to be the practice of Homer, Æschylus, Sophocles, Euripides, &c. Now, this is the total amount of what Aristotle has done in his Treatise of *Poetry;* he has placed the foundation of his laws of criticism on the authority of the great writers of antiquity; and beyond this rule of practice he has not proceeded a single step. In the whole of his Treatise

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De Poeticâ, there is not the slightest attempt to deduce those laws from the nature of man, or from any consonance which they have with the human passions. That work is exclusively confined to the description of the different species of poetical composition; the requisite ingredients of each species with respect to subject; and a brief detail of certain rules for the structure and style of each species; for the adoption of which, the author assigns no reason whatever, but illustrates them, by the practice of Homer and the elder Greek poets; or, in other words, recommends them to observation, for this reason alone, that the best writers have observed them. In the *Poetics* of Aristotle, we see the author's predominant talent for arrangement and classification, and for drawing nice distinctions; but not a tincture of that philosophical analysis of the human mind and passions; much less the attempt of deducing from that source his rules of criticism, for which he has been thus gratuitously praised by Mr Harris *.

* It is true, that the treatise Περὶ Ποιητικῆς, is generally regarded as an imperfect or mutilated work, and only a part of

But it is in the *Art of Rhetoric*, as well as in the *Poetics* of Aristotle, that Mr Harris professes to find the science of *Philosophical Criticism*; and here his position, if not actually more true, is at least more approaching to the truth. In the Treatise *de Rhetoricâ*, the author has given a very elaborate analysis of the passions, and of the sources of pain and pleasure, happiness and unhappiness: because his purpose was to instruct his orator or rhetorician in the art both of swaying the passions to his own purposes, and of persuading the judgment. An analysis of the passions was absolutely necessary for those ends. But Aristotle, in his *Treatise of Rhetoric*, had no design of teaching the *Art of Criticism*: and accordingly we find not in that work any application of his theory of the passions to the

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a larger treatise on the subject; but we can form our judgment only from what appears, and are not entitled to suppose the lost works of an author to contain particular opinions, of which his existing writings exhibit no trace: *De non apparentibus et non existentibus eadem est ratio.*

BOOK II. works of taste and genius, so as to direct our judgment of those works, or lead to a just estimate of their merits and defects, as artificial compositions. He sometimes quotes passages from the poets, as illustrating or confirming his theoretical opinions; just as a modern moralist might illustrate a particular observation by a passage of Shakespeare or of Milton, without any view of displaying the merits of those authors *: and

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* Thus, in Lib. i. c. 11., after observing, that of those recollections which afford pleasure, some consist in the remembrance of things which were agreeable at the time they happened; and others of things disagreeable at the time, but attended with beneficial effects with regard to our fame or fortune, he adds, "Whence it is well said, Ἀλλ' ἡδύ τοι σωθέντα μεμνῆσθαι πόνων, Sweet is the memory of past dangers to the man who is in safety;" which is a verse of Euripides: And again,

Μετὰ γάρ τι καὶ ἄλγιστα τέρπεται ἀνὴρ
Μνήμενος, ὅστις πολλὰ παθὼν καὶ πολλὰ ἐδέγμη.

For he who much has suffered much will know,
And pleas'd remembrance builds delight on woe.
POPE.

which is a distich from the 15th Book of the *Odyssey*. It is evident, that by these quotations, Aristotle meant no more than to confirm his own observations by the authorities of

those passages are but very rarely introduced. It is obvious, that there is an essential difference between the illustration of a philosophical theory of the powers of the mind, and of the passions, by examples taken from the works of genius in poetry and the other fine arts; and an exposition of the merits and defects of the works of genius in the fine arts, by shewing their agreement or disagreement with a rational theory of the powers of the mind, or analysis of the passions. The former is, strictly speaking, philosophy borrowing aid from criticism; the latter, criticism borrowing aid from philosophy. An example will make this distinction obvious to every mind. David Hume was both an acute philosopher, and a great historian. In his *Philosophical Essays*, he frequently makes an admirable use of history to illustrate his speculative opinions in morals, metaphysics and politics; and in his *History of England*, he

Euripides and Homer: he had no intention of shewing the propriety of sentiment in those two passages of the poets, from their consonance to a principle of human nature.

BOOK II. every where intersperses his narrative with philosophical sentiments, giving enlarged and general views of human nature, in aspects both moral and political; whence it is justly termed a Philosophical History. The one species of composition, it is easily seen, is essentially different from the other; although in some points they mutually encroach upon each other's peculiar province.

It may therefore be allowed, that in the Treatise of *Rhetoric*, Aristotle has discoursed with admirable precision on the nature of the passions, and has developed with great sagacity their most delicate modifications, and the power they have of balancing each other's influence; and likewise, that he is often very happy in illustrating his sentiments by apt quotations from the poets, historians and rhetoricians: But in all this, he is only an acute moral philosopher, and able instructor in the art of rhetoric; in this treatise, he is neither a critic, nor a teacher of criticism.

The assertion, therefore, of Mr Harris,

that we owe to these two works of Aristotle, the art of Philosophical Criticism, is not built on any just foundation; if by Philosophical Criticism we mean, that which draws its rules, not from authority, and the practice of eminent writers, but from its native and primary source, the structure of the human mind and the nature of the passions *.

* Mr Harris's own critical writings, though excellent in their kind, do not properly come under the denomination of Philosophical Criticism, in the sense in which I have endeavoured to explain it. He is very ample in the description of the several figures of speech which enter into the different species of composition; but it is only by starts that he glances at the philosophical foundation of the pleasure we derive from what we term the beautiful or the excellent in composition. Thus, after announcing, "That nothing excellent in "any literary performance happens merely by chance; but that "there is an intelligent and rational cause for every effect," *Philolog. Inquir.* Part ii. Introd. and ch. 1.); and after observing with great justness, that nothing contributes more to the attainment of a truly critical taste, than on every occasion to investigate this cause; an observation from which we are led naturally to expect, that he is to enter into a full investigation of those causes which produce all the excellencies of literary composition; we are much disappointed, when we find,

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Demetrius Phalereus on Elocution.

If the principles of Philosophical Criticism had truly been discoverable in those works of Aristotle which treat of poetry and rhetoric, we should in all probability have discovered them in the treatise of his scholar DEMETRIUS PHALEREUS on Elocution, (Περὶ Ἑρμηνείας), who, as Mr Harris justly observes, was the most masterly of the disciples of Aristotle, and who appears to follow the precepts, and even the text of his master, with far greater attention than any of the rest: but the treatise of Demetrius is directed entirely to the mechanism of composition, that is to say, the structure of oratorical periods, and the different styles of prose-writing, as distinguished by their several characters, of simple, magnificent,

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that he limits the proof of this important proposition to two solitary examples; "the amazing force which, on the one hand, "contraries acquire, either by juxta-position or quick succes-"sion; and, on the other hand, the force which similar and "congenial incidents acquire by concatenation or accumula-"tion."—And this is, in truth, all that this ingenious author has given us upon the subject of philosophical criticism, according to its true meaning; or that science which founds the rules of judgment in the productions of the fine arts, upon the principles of human nature.

grave, or ornamented. These he distinguishes with great accuracy, and illustrates his distinctions by apt examples from the most eminent writers among his countrymen. He is likewise very precise in the description of the different figures of rhetoric, and the aptness or propriety of each to the nature of the composition, or the purpose of the orator or writer: but in all this, we discover not a trace of philosophical criticism: The only appeal for the truth or justness of his observations, is to the taste of the reader, and the authority of writers of acknowledged merit.

Longinus.

Of all the ancient authors, LONGINUS has made the nearest approach to that species of criticism to which we allude; yet it is only in a few detached passages, as if it were through accident that he had stumbled upon it. The general scope of his work, is, like those of his predecessors in the critical art, to deliver a series of judicious precepts or rules for the attainment of that sublimity in writing, of which he points out the different sources; and to give an illustration of those precepts by happy examples,

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taken from Homer, the lyric and dramatic writers, and the orators and historians. Occasionally indeed, though very rarely, we meet with an observation drawn from the nature of the passions, to justify the use of certain figures of speech which are instrumental to the production of the sublime: As where he says, "That the *Hyperbaton* is "a transposing of words or thoughts out "of their natural order; a figure stamped "with the truest image of a most forcible "passion: When men are actuated either "by wrath, or fear, or indignation, or jea-"lousy, or any of those numberless pas-"sions incident to the mind, they fluctuate "in their resolutions, and change their pur-"poses without any apparent reason; and "as their thoughts and resolutions vary, so "their language and expression become "perplexed and contradictory: And hence "a happy imitation of those transpositions "by a skilful writer, gives the greatest re-"semblance to the real workings of the "passions in nature; and the work be-"comes then consummate and perfect in "its kind*." This is philosophical criti-

* LONGINUS, c. 22.

cism; but it is very thinly scattered through the treatise of Longinus; who, therefore, seems to have hit upon it purely through accident, and to have been very far from ever suspecting, that the laws of the human mind were the radical and universal foundation, not only of the rules of the sublime, but of our judgment of all that is excellent in the productions of the fine arts.

One general remark may be made on the writings of the ancient critics, or teachers of the critical art, That their attention is almost exclusively confined to the artificial structure of literary compositions, their style, and the figures of speech which they employ; and is very rarely directed to the sentiments, or the power which these have of affecting the mind through the medium of the passions. The *Poetics* of *Aristotle*, the Treatise of *Demetrius* on Elocution, and that of *Dionysius of Halicarnassus* on Composition, are all directed to the mechanical structure of the works of literature in their various kinds, the figures of speech most appropriate, and the style best suited to each species. With regard to the Oratorial

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Institutions of *Quinctilian*, it would be to entertain too limited an idea of that great and useful work, to class it among the treatises of criticism. It is a most comprehensive digest of all that relates to the education, or forms the accomplishment of a perfect orator; embracing even what concerns the natural endowments of his mind and person, as well as the rules of discipline in his peculiar art. Yet even as to this work, the observation holds good, that in every thing regarding the art of oratory, the mechanical part, or the artificial, is much more the object of the author's precepts than the thoughts or sentiments.

The sole exception to this remark is, as I have already hinted, the Treatise of *Longinus*, which, from the nature of the subject, must be directed in a considerable degree to the ideas or sentiments; as these are a principal source of the sublime: yet it appears that even this critic was of opinion, that much of the essence of the sublime is to be found in the mode of expression and peculiar structure of the style; as we see from his enumeration of the *five* sources of

the sublime; of which the latter three regard the artificial part alone, that is, the nature of the composition, and not the sentiment *. It is true, that one capital part of this Treatise on the Sublime, which probably regarded chiefly the nature of the sentiments, is altogether lost; namely, his Disquisition on the Passions: and it seems indeed not improbable that the author, in handling that subject, may have entered upon that species of criticism, properly termed philosophical; but this we can only conjecture; for the work, as it has come down to us, forms no exception to the general remark applying to all the ancient critics.

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* After stating, in his 8th chapter, that the two first sources of the sublime are a grand and noble thought, and an enthusiastic display of the passions, Πρῶτον μὲν καὶ κράτιστον, τὸ περὶ τὰς νοήσεις ἀδρεπήβολον,—δεύτερον δὲ, τὸ σφοδρὸν καὶ ἐνθουσιαστικὸν Πάθος, which, says he, are in general, the natural and inborn sources of the sublime, τὰ ἴδια κατὰ τὸ πλέον ἀνθρωπίνης φύσεως: the other three, he observes, relate to what is artificial, and may be acquired by discipline: and these are an apt disposition of the figures, a grave and manly diction, and a dignified and elevated structure of the periods, ἡ τε ποια τῶν σχημάτων πλοκὴ, —ἡ γενναία φράσις,—ἡ ἐν ἀξιώμασι καὶ διαρσει συνθεσις.——

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Lord Kames's plan original, but the way paved by former writers.

But while we are thus disposed to assign to Lord Kames the merit of having been the first writer who has raised philosophical criticism to the rank of a science, by reducing it to general principles, methodizing its doctrines, and supporting them every where by the most copious and beautiful illustrations; it is not to be denied, that he may have borrowed many useful hints from some of the works of preceding authors, which seem to have paved the way for that system, which it was reserved for his ingenuity to rear.

The peculiar direction of the studies of the Scottish men of letters to metaphysical speculation, for which of late they have been so remarkably distinguished, seems to have been first given by the writings of Dr Francis Hutcheson, who, in the year 1725, published his *Inquiry into the Original of our Ideas of Beauty and Virtue.* Within a short time from that period, Mr Andrew Baxter published his *Inquiry into the Nature of the Human Soul;* which was followed, a few years afterwards, by Mr David Hume's *Essay on Human Nature;* a work, which we

have seen, gave immediate origin to Lord Kames's *Essays on Morality and Natural Religion.* It is not improbable, that the *Inquiry into the Original of the Ideas of Beauty and Virtue*, may also have led, though indirectly, to the first general idea of the *Elements of Criticism.*

Dr Hutcheson's Essay on Beauty and Virtue.

Dr Hutcheson, in the first part of the Inquiry just mentioned, had, with great ingenuity, endeavoured to account for the pleasure the mind derives from the contemplation both of physical beauty and the beauty of theorems or universal propositions, upon the same original principle of our nature,—a relish for uniformity mixed with variety. He had likewise the merit of being the first philosopher who considered the powers of imagination as so many distinct senses, to which, in this inquiry, he gave the name of the *Internal Senses*, though afterwards with more precision he has, in his latter works, termed them the *Reflex Senses*; because they truly consist in certain feelings which arise upon the mind's reflecting on some qualities belonging to objects, besides those which present themselves

BOOK II. immediately to the senses: such are the feelings of Novelty, Sublimity, Beauty, Harmony, Imitation, and others *.

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* Dr Hutcheson's system of morals is, in its foundation, very nearly the same with that of Lord Shaftesbury. He agrees with the noble author in asserting a distinct class of the human affections, which, while they have no relation to our own interest, propose for their end the welfare of others: but in the system of Shaftesbury, this distinction is not very happily made out: for he allows, that the exercise of those benevolent feelings is attended with a calm satisfaction or pleasure to the mind: but this pleasure will, of course, be felt as a motive to the performance of those actions which excite it; and thus, after all, a selfish feeling may be the mainspring of our benevolent emotions. The system of Hutcheson involves no such paralogism. He maintains, that the pleasure arising from the performance of a benevolent action, is not the ruling principle in prompting to such actions; but that, independently of the selfish enjoyment, which is allowed in part to exist, there is in the human mind a calm desire of the happiness of all rational beings, which is not only consistent with, but of superior influence in regulating our conduct, to the desire of our own happiness; in so much, that whenever these principles come into opposition, the moral sense decides in favour of the former against the latter. This principle is the key to Mr Hutcheson's theory of morals, and was certainly a new hypothesis. Lord Kames has adopted Mr Hutcheson's system, in so far as he holds, that the selfish affections are distinct from the social, and subordinate to them; which, as he says, "is a wonderful and beautiful con-" trivance of the Author of Nature to give authority to mo-" rality."—*Essays on Morality*, &c. p. 58.

Akenside's Pleasures of Imagination.

From Dr Hutcheson's *Theory of the Reflex Senses*, and various hints to be found in the *Essay on Beauty and Virtue*, as well as from Mr Addison's papers in the *Spectator*, Dr AKENSIDE conceived the plan of his poem *On the Pleasures of Imagination*. In this elegant work, (first published in 1744), it must be acknowledged, that the principles of taste, in those productions where the imagination bears a part, are deduced from their true source, in the constitution of the mind: But the enthusiasm of the poet is hostile to the deductions of the philosopher; the narrow limits of the work preclude any lengthened process of reasoning; and a philosophical thought just hinted, is seldom pursued to a satisfactory conclusion. Enough however is done in this fine poem, to shew that the laws of taste are susceptible of analysis, and are a fit subject of philosophical investigation.

Other writers, Gerard, Burke, &c.

The Treatises of Hutcheson and of Hume, evidently gave a direction to the chief speculations of that Literary Society, which was formed at Aberdeen about the year 1755; and to which we owe the writings

BOOK II. of Reid, Gregory, Campbell, Gerard, and Beattie.

Dr GERARD's *Essay on Taste*, was published in 1758; and in this work, the author, founding on Dr Hutcheson's description of the internal or reflex senses, by which we perceive and form judgments of all the objects of taste, has, in this Essay, discoursed with great ingenuity of the principles of taste, and of the manner in which those senses co-operate in forming a good taste; and from a review of these principles and their operation, he has endeavoured to assign to that faculty its just rank and importance among those powers of the human mind which contribute to our pleasure and happiness.

But the two works last mentioned, as well as another on a kindred subject, which appeared much about the same time with Dr Gerard's *Essay on Taste*, I mean Mr BURKE's *Inquiry into the Origin of our Ideas of the Sublime and Beautiful*, are of a nature purely philosophical; and though extremely useful in laying down those principles of judg-

ment in the fine arts which form the taste, and regulate the decisions of a good critic, yet as they contain no direct application of those principles to the productions of the poets, orators, and artists, unless a few occasional notices, which, like those of Aristotle and Longinus, serve merely the purposes of illustration, there still remains a chasm to be filled up by making that direct application, and using those principles as a canon of judgment for appretiating the merits of all the productions of the fine arts, in poetry, painting, sculpture, music, and architecture; and that chasm has been supplied by *The Elements of Criticism*, first published in the year 1762, in three volumes 8vo.

Scope and object of *Elements of Criticism*.

In this elaborate work, the author proceeds on this fundamental proposition, that the impressions made on the mind by the productions of the fine arts, are a subject of reasoning as well as of feeling; and that, although the agreeable emotion arising from what is beautiful, or excellent in those productions, may be a gift of nature, and like

BOOK II.

all other natural endowments, very unequally distributed among mankind, it depends on certain principles or laws of the human constitution which are common to the whole species: Whence it follows, that as a good taste consists in the consonance of our feelings with those fixed laws, our judgments on all the works of genius are only to be esteemed just and perfect, when they are warranted by the conclusions of a sound understanding, after trying and comparing them by that standard. The general scope of the work is thus announced by the author in his Introduction:

"The design of the present undertaking, "which aspires not to morality, is to exa- "mine the sensitive branch of human na- "ture; to trace the objects that are natu- "rally agreeable, as well as those that are "naturally disagreeable, and by these means "to discover, if we can, what are the ge- "nuine principles of the fine arts. The "man who aspires to be a critic in these "arts must pierce still deeper: he must ac- "quire a clear perception of what objects "are lofty, what low, what proper or im-

"proper, what manly, and what mean or "trivial. Hence a foundation for reasoning "upon the taste of any individual, and "for passing sentence upon it. Where it "is conformable to principles, we can pronounce with certainty that it is correct; "otherwise that it is incorrect, and perhaps "whimsical. Thus the fine arts, like morals, become a rational science; and, like "morals, may be cultivated to a high degree of refinement."

Advantages of such disquisitions.

A philosophic inquiry into the principles of the fine arts, has a very general advantage, and is useful both to those who have a natural good taste, and those who want it. To the former class of men, those endowed by nature with an acute perception of what is excellent in the fine arts, it must furnish an additional source of pleasure to find the decisions of taste ratified by the judgment; which is a canon in their own mind by which they prove and verify their sentiments of approbation and dislike; and are enabled to give a reason for those decisions, which to others who are deficient in the

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same acuteness of feeling, would, without such proof, seem altogether gratuitous and capricious. To the latter class, those who have no delicacy of perception in the objects of taste, this exercise of the judgment affords an artificial rule, which supplies the defect of natural sensibility, and enables them not only to estimate the opinions of others, but to form just opinions for themselves. If it cannot give the high and enthusiastic pleasure which results from actual feeling, it gives at least the more sober satisfaction, which, where a work is observed to be framed according to the rules of an art, arises from the contemplation of ingenious design and skilful execution.

But, in truth, there are many gradations between a total want of sensibility to the beauties of the productions of the fine arts, and the highest or most exquisite feeling of those beauties; and the great majority of mankind stand not in the extremes, but in the intermediate degrees of the scale *. " It

* Of the various measure in which the powers of the imagination, and the enjoyments attending on those powers, are

" is rare," Lord Kames observes, " to find " one born with such delicacy of feeling, as

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distributed among the human race, there is a clear and elegant specification in the following passage (most comprehensive in point of thought) from Lord Monboddo's *Ancient Metaphysics*? " Had we no other desires than those belonging " to the animal life, our imaginations, like those of other " animals, would be wholly employed about the objects of " those desires: But we have other desires belonging to the " rational nature, which make our imaginations much more " rich and various than those of the brute creation. And " first, we have the love of Beauty of every kind, whether in " objects visible or audible, in manners, sentiments or ac- " tions. This love of beauty is congenial with the rational " nature; and whoever is entirely void of it, hardly deserves " the name of a man. But in this, as in other respects, " man differs much from man; for some have the love and " taste for beauty in a very small degree; others, whom na- " ture hath formed of her best clay, and heaven bestowed on " them a more than ordinary portion of the celestial fire, " have it in a very high degree. Of such men, the imagi- " nations are filled with the most beautiful scenes of nature " and art, men and manners. If it be the beauty of the vi- " sible kinds which captivates those minds, and if their ima- " ginations are carried into works, then have we painters, " sculptors, and poets of an inferior kind, I mean descrip- " tive poets. If it be the beauty of sounds, then have we " musicians. But if the turn of mind be towards beauties " of a higher kind, such as those of sentiments, manners and " actions, then are produced heroic and tragic poets, paint- " ers, sculptors and musicians, of the highest order, who ex-

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" not to need instruction: it is equally rare " to find one so low in feeling, as not to be " capable of instruction." To the generality of mankind, a work of this nature, which presents a series of judicious precepts or rules of criticism, of which the truth is put beyond dispute, by an appeal to the judgment of all who are able to try them by that standard; and which are illustrated by a vast variety of beautiful and striking examples taken from the works of art, is productive both of high pleasure, and of real improvement of the sensitive faculties, which even, where naturally acute, are wonderfully sharpened and refined by exercise.

" So advantageous is practice," (says an eminent writer), " to the discernment of " beauty, that before we can give judgment " on any work of importance, it will even

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" press, in their compositions, what is most sublime and ex- " alted in sentiment and character. The capacity of per- " forming in these several arts, is what we call Genius; and " the perception of beauty in them, and the capacity of di- " stinguishing true beauty from what is false and affected, is " what we call Taste."—*Ancient Metaphysics*, vol. ii. p. 265.

" be requisite, that that very individual per-
" formance be more than once perused by
" us, and be surveyed in different lights
" with attention and deliberation. There
" is a flutter or hurry of thought which at-
" tends the first perusal of any piece, and
" which confounds the genuine sentiment
" of beauty. The relation of the parts is
" not discerned: the true characters of style
" are little distinguished: The several per-
" fections and defects seem wrapped up in
" a species of confusion, and present them-
" selves indistinctly to the imagination.
" Not to mention, that there is a species of
" beauty, which, as it is florid and superfi-
" cial, pleases at first; but being found in-
" compatible with a just expression either
" of reason or passion, soon palls upon the
" taste, and is then rejected with disdain,
" at least rated at a much lower value. It
" is impossible to continue in the practice
" of contemplating any order of beauty,
" without being frequently obliged to form
" comparisons between the several species
" and degrees of excellence, and estimating
" their proportion to each other. A man

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"who has had no opportunity of comparing "the different kinds of beauty, is indeed "totally unqualified to pronounce an opi- "nion with regard to any object presented "to him. By comparison alone we fix the "epithets of praise or blame, and learn how "to assign the due degree of each.——One "accustomed to see, and examine, and "weigh the several performances, admired "in different ages and nations, can alone "rate the merits of a work exhibited to his "view, and assign its proper rank among "the productions of genius *."

The principal advantages arising from the study of criticism as a rational science are enumerated by the author, in his introduction to the work. Among these, perhaps not the least in value, is the superior duration of the pleasures derived from the fine arts when so cultivated; and their subsisting as a source of enjoyment to the latest period of life, when the natural sensibility has lost its acuteness, from the decay of the

* HUME'S *Essays*, vol. i. Essay 23. On the Standard of Taste.

animal machine. As we advance in life, we are conscious of a gradual diminution in the force of those impressions created by works of genius, which operate on the imagination or on the passions. No man at the age of sixty-five is equally impressed with the sublime and daring flights of Milton, the romantic fictions of Ariosto and Tasso, the melting tenderness of Otway, or the deep pathos of Southerne, as he was at the age of five and twenty. It were a hard part of our lot, if our maturer years had no substitute for those vivid pleasures which constituted the charm of our brighter days: yet such would be our gloomy destiny, if the exercise of the judgment came not to our relief in the decay of our feelings. But this happy succedaneum, this cordial, this medicine of the mind, (ψυχης Ιατρεια), will not voluntarily present itself. It is to be sought, cultivated, prepared, and skilfully applied; nor is it till after long use and repeated experiment, that we become thoroughly acquainted with its virtues. "To the man "who resigns himself," (says the author), "to sentiment or feeling, without interpo-"sing any sort of judgment, poetry, music,

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"painting, are mere pastime. In the prime "of life indeed they are delightful, be- "ing supported by the force of novelty, "and the heat of imagination: but when "no longer thus supported, they lose their "relish; and are generally neglected in the "maturity of life, which disposes to more "serious and more important occupations. "To those who cultivate Criticism as a re- "gular science, governed by just principles, "and giving scope to judgment as well as "to fancy, the fine arts are a favourite en- "tertainment; and in old age, maintain "that relish which they produce in the "morning of life *." The truth of this proposition, I presume, was never more completely demonstrated, than in the instance of the author himself, who in the wane of life, could derive enjoyment from those contemplations, and apply himself with ardour to those studies and pursuits, which enabled him, at the age of sixty-six, to compose and publish his *Elements of Criticism.*

* Introduction to *Elements of Criticism.*

CHAP. IV.

The author's method of discussion.

Of the mode of disquisition adopted in this comprehensive work, a better idea may be obtained from a few examples, than can be conveyed by any general description: and in giving these examples, I shall choose such as will not only convince the reader of the truth of the principles, but will furnish an agreeable specimen of the author's ingenuity and acuteness.

It may be previously observed, that his method is, to begin with laying down some general observation, or moral sentiment relative to the passions; which is commonly either of so simple a nature as to be verified immediately by our own consciousness, or is explained with such precision, that the mind, upon a very short reflection, yields its assent as to an axiom. The truth of the theoretical observation thus established, and assumed, the author proceeds to apply it to practice, by using it as a canon of criticism to try certain passages of the poets, or specimens of the works of the fine arts; which accordingly, are held to be perfect or defective, as they coincide or disagree with the canon.

BOOK II. Examples.

I. Thus, after explaining the difference between deliberate anger, and that which arising before all thought, is properly instinctive, he says:

"Instinctive anger is frequently raised "by bodily pain, (by a stroke, for example, "on a tender part), which ruffling the temper and unhinging the mind, is in its "tone similar to anger: and when a man "is thus beforehand disposed to anger, he "is not nice or scrupulous about an object; "the person who gave the stroke, however "accidentally, is by an inflammable temper, "held a proper object, merely by having "occasioned the pain. It is still more remarkable, that a stock or a stone by which "I am hurt, becomes an object for my resentment: I am violently incited to crush "it to atoms. The passion indeed in that "case can be but a single flash; for being "entirely irrational, it must vanish with "the first reflection. Nor is this irrational "effect confined to bodily pain: inward "distress, when excessive, may be the occasion of effects equally irrational: When "a friend is in danger, and the event un-

" certain, the perturbation of mind occa-
" sioned thereby, will, in a fiery temper,
" produce momentary fits of anger against
" that very friend, however innocent:
" Thus Shakespeare, in the *Tempest*:

" *Alonzo.* ——————— Sit down and rest.
" Even here I will put off my hope, and keep it
" No longer for my flatterer: he is drown'd
" Whom thus we stray to find; and the sea mocks
" Our frustrate search on land. Well, let him go.
" Act III. Sc. 3.

" The final words, *Well, let him go*, are an
" expression of impatience and anger at
" Ferdinand, whose absence greatly distres-
" sed his father, dreading that he was lost
" in the storm. This nice operation of the
" human mind, is by Shakespeare exhibited
" upon another occasion, and finely painted.
" In the tragedy of *Othello*, Iago, by dark
" hints and suspicious circumstances, had
" roused Othello's jealousy; which, how-
" ever, appeared too slightly founded to be
" vented upon Desdemona, its proper ob-
" ject. The perturbation and distress of
" mind thereby occasioned, produced a mo-

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" mentary resentment against Iago, consi-
" dered as occasioning the jealousy, though
" innocent:

" *Othello.* Villain, be sure thou prove my love
" a whore;
" Be sure of it: give me the ocular proof;
" Or by the wrath of man's eternal soul *,
" Thou hadst been better have been born a dog,
" Than answer my wak'd wrath.
" *Iago.* Is't come to this?
" *Othello.* Make me see't; or at the least so
" prove it,
" That the probation bear no hinge or loop
" To hang a doubt on; or wo upon thy life!
" *Iago.* My noble lord ——————
" *Othello.* If thou dost slander her, and
" torture me,
" Never pray more; abandon all remorse;
" On horror's head horrors accumulate;
" Do deeds to make heaven weep, all earth amaz'd:
" For nothing can'st thou to damnation add
" Greater than that.

" *Othello*, Act. III. Sc. 8."

El. of Crit. Ch. ii. sect. 6.

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* The more common reading is:

" Or by the worth of mine eternal soul:"

II. On the subject of contending passions he thus observes: "Two passions having "opposite tendencies may exist in the same "breast; but the opposition of their aim pre- "vents any sort of union; and accordingly "they are not felt otherwise than in suc- "cession: the consequence of which must "be, either that the passions will balance "each other, and prevent external action; "or that one of them will prevail and ac- "complish its end. Ovid paints in lively "colours the vibration of mind between "two opposite passions directed to the "same object. Althea had two brothers "much beloved, who were unjustly put to "death by her son Meleager, in a fit of "passion; she was strongly impelled to re- "venge; but the criminal was her own "son. This ought to have withheld her "hand; but the story is more interesting, "by the violence of the struggle between "resentment and maternal love:

"Dona Deûm templis nato victore ferebat,
"Cùm videt extinctos fratres Althæa referri:
"Quæ plangore dato, mœstis clamoribus urbem
"Implet, et auratas mutavit vestibus atris.
"At simul est auctor necis editus, excidit omnis
"Luctus, et a lacrymis in pœnæ versus amorem est."

She had long kept with the utmost care a consecrated brand, to which the Fates had declared that the destiny of her son was attached, who was no longer to enjoy life than while that brand was preserved from the fire. In the violence of her passion, she brings out the brand with a determined purpose to burn it:

" Tum conata quater flammis imponere ramum
" Cœpta quater tenuit. Pugnat materque, sororque,
" Et diversa trahunt unum duo nomina pectus.
" ——— Incipit esse tamen melior germana parente,
" Et consanguineas ut sanguine leniat umbras,
" Impietate pia est. Nam postquam pestifer ignis
" Convaluit, Rogus iste cremet mea viscera, dixit!
" —Vos modo fraterni manes, animæque recentes,
" Officium sentite meum ———————
" Hei mihi, quo rapior! fratres ignoscite matri!
" Deficiunt ad cœpta manus." ————

The struggle is at last decided, and the brand is burnt.

On this fine passage, the author makes the following remark, which is singularly acute and ingenious: " In cases of this

"kind, one circumstance always augments "the fluctuation: after balancing between "two actions, a resolution to prefer one of "them is an inchoated gratification of the "prevailing passion, which moderates it in "some degree; and this circumstance tends "to give a superiority to the opposite pas- "sion: Another circumstance also concurs, "that this opposite passion has by restraint "acquired in the interim some additional "force." — *Elements of Criticism*, Ch. ii. Part 4.

III. On the subject of the representation of the passions in fictitious composition, the author is not less just and ingenious in his reflections, than happy in exemplifying them:

"To talk in the language of music, each "passion hath a certain tone, to which "every sentiment proceeding from it ought "to be tuned with the greatest accuracy: "this is no easy work, especially where "such harmony ought to be supported du- "ring the course of a long theatrical repre-

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" sentation. In order to reach such delicacy
" of execution, it is necessary that a writer
" assume the precise character and passion
" of the personage represented; which re-
" quires an uncommon genius. But it is
" the only difficulty; for the writer who,
" annihilating himself, can thus become
" another person, need be in no pain about
" the sentiments that belong to the assumed
" character; these will flow without the
" least study, or even preconception; and
" will frequently be as delightfully new to
" himself as to his reader. But if a lively
" picture, even of a single emotion, require
" an effort of genius, how much greater the
" effort to compose a passionate dialogue,
" with as many different tones of passion as
" there are speakers? With what ductility
" of feeling must that writer be endowed,
" who approaches perfection in such a work;
" when it is necessary to assume different,
" and even opposite characters and passions,
" in the quickest succession? and yet this
" work, difficult as it is, yields to that of
" composing a dialogue in genteel comedy,
" exhibiting characters without passion. The
" reason is, that the different tones of cha-

" racter are more delicate, and less in sight " than those of passion: and, accordingly, " many writers who have no genius for " drawing characters, make a shift to re- " present tolerably well, an ordinary pas- " sion in its simple movements.——The " art of mimicking any singularity in ges- " ture or in voice, is a rare talent, though " directed by sight and hearing, the acutest " and most lively of our external senses: " how much more rare must the talent be, " of imitating characters and internal emo- " tions, tracing all their different tints, and " representing them in a lively manner by " natural sentiments properly expressed? " The truth is, such execution is too deli- " cate for an ordinary genius; and for that " reason, the bulk of writers, instead of ex- " pressing a passion as one does who feels " it, content themselves with describing it " in the language of a spectator. To awa- " ken passion by an internal effort merely, " without any external cause, requires great " sensibility: and yet this operation is ne- " cessary, not less to the writer than to the " actor; because none but those who actu-

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" ally feel a passion, can represent it to the
" life. The writer's part is the more com-
" plicated: he must add composition to
" passion; and must in the quickest suc-
" cession adopt every different character.
" But a very humble flight of imagination
" may serve to convert a writer into a spec-
" tator; so as to figure in some obscure
" manner an action as passing in his sight
" and hearing. In that figured situation,
" he entertains his readers with his own re-
" flections, with cool description and florid
" declamation; instead of making them eye-
" witnesses, as it were, to a real event, and
" to every movement of genuine passion."

These acute observations are verified by contrasted examples taken from the two great masters of the drama in England and France, Shakespeare and Corneille.

" *Lear.* ——————— Filial ingratitude!
" Is't not as if this mouth should tear this hand
" For lifting food to't?—But I'll punish home,—
" No, I will weep no more.——In such a night,
" To shut me out! Pour on, I will endure.

" In such a night as this! O Regan, Goneril,
" Your old, kind father, whose frank heart gave
" all—
" O! that way madness lies: let me shun that:
" No more of that.————
" *Kent.* Good, my lord, enter here.
" *Lear.* Prythee, go in thyself; seek thine own
" ease;
" This tempest will not give me leave to ponder
" On things would hurt me more:—but I'll go in:
" In, boy, go first.—You houseless poverty——
" Nay, get thee in; I'll pray, and then I'll sleep.—
" Poor naked wretches, wheresoe'er you are,
" That bide the pelting of this pityless storm!
" How shall your houseless heads, and unfed sides,
" Your loop'd and window'd raggedness defend you
" From seasons such as these?—O, I have ta'en
" Too little care of this! Take physic, pomp;
" Expose thyself to feel what wretches feel,
" That thou may'st shake the superflux to them,
" And show the heavens more just!"————

K. Lear, Act III. Sc 5.

" The sentiments here displayed, flow so
" naturally from the passions represented,
" that we cannot conceive any imitation
" more perfect. With regard to the French

BOOK II. " author, truth obliges me to declare, that " he describes in the style of a spectator, " instead of expressing passion like one who " feels it: which naturally betrays him into " a tiresome monotony, and a pompous " declamatory style.——In the tragedy of " *Cinna*, Æmilia, after the conspiracy was " discovered, having nothing in view but " racks and death to herself and her lover, " receives a pardon from Augustus, attend- " ed with the brightest circumstances of " magnanimity and tenderness. This is a " lucky situation for representing the pas- " sions of surprise and gratitude in their " different stages, which seem naturally to " be what follow. These passions, raised " at once to their utmost pitch, and being " at first too big for utterance, must for " some moments be expressed by violent " gestures only: so soon as there is vent " for words, the first expressions are broken " and interrupted: at last we ought to ex- " pect a tide of intermingled sentiments, " occasioned by the fluctuation of the mind " between the two passions. Æmilia is " made to behave in a very different man- " ner: With extreme coolness she describes

" her own situation, as if she were merely " a spectator; or rather the poet takes the " task off her hands:

" Et je me rends, Seigneur à ces hautes bontés,
" Je recouvre la vûe auprès de leur clartés,
" Je connois mon forfait qui me sembloit justice,
" Et ce que n'avoit pû la terreur du supplice,
" Je sens naitre en mon âme un repentir puissant,
" Et mon cœur en secret me dit, qu'il y consent.
" Le ciel a résolu votre grandeur suprême,
" Et pour preuve, Seigneur, je n'en veux que moi-
" même.
" J'ose avec vanité me donner cet éclat,
" Puisqu'il change mon cœur, qu'il veut changer
" l'état.
" Ma haine va mourir que j'ai crue immortelle,
" Elle est morte, et ce cœur devient sujet fidele,
" Et prenant désormais cette haine en horreur,
" L'ardeur de vous servir succède à sa fureur.

" Act v. Sc. 3."

V. I shall close these examples of the author's method with a few passages from the chapter on *Comparisons*.

" It is evident, that a comparison is not

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" proper upon every occasion: a man, when
" cool and sedate, is not disposed to poeti-
" cal flights, nor to sacrifice truth and reali-
" ty to the delusive operations of the ima-
" gination: far less is he so disposed, when
" oppressed with care, or interested in some
" important transaction that occupies him
" totally. On the other hand, it is obser-
" vable, that a man, when elevated or ani-
" mated by any passion, is disposed to ele-
" vate and animate all his objects: he avoids
" familiar terms, exalts objects by circum-
" locution and metaphor, and gives even
" life and voluntary action to inanimate be-
" ings. In this warmth of mind, the high-
" est poetical flights are indulged, and the
" boldest similes and metaphors relished.
" But without soaring so high, the mind is
" frequently in a tone to relish chaste and
" moderate ornament; such as comparisons
" that set the principal object in a strong
" point of view, or that embellish and di-
" versify the narration. In general, when
" by any animating passion, whether plea-
" sant or painful, an impulse is given to the
" imagination, we are in that condition dis-
" posed to every sort of figurative expres-

" sion, and in particular to comparisons. " Love, for example, in its infancy, rousing " the imagination, prompts the heart to dis- " play itself in figurative language and in " similes:

" *Troilus.* Tell me, Apollo, for thy Daphne's
" love,
" What Cressid is, what Pandar, and what we?
" Her bed is India; there she lies, a pearl:
" Between our Ilium and where she resides
" Let it be call'd the wide and wandering flood;
" Ourself the merchant, and this sailing Pandar
" Our doubtful hope, our convoy, and our bark.
" *Troilus and Cressida*, Act I. Sc. 1.

" The dread of a misfortune, however " imminent, involving always some doubt " and uncertainty, agitates the mind, and " excites the imagination:

" *Woolsey.* ——— Nay then, farewell;
" I've touch'd the highest point of all my greatness;
" And from that full meridian of my glory,
" I haste now to my setting. I shall fall,
" Like a bright exhalation in the evening,
" And no man see me more.
" *Henry VIII.* Act III. Sc. 4.

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" But it will be a better illustration of " the present head, to give examples where " comparisons are improperly introduced. " I have already had occasion to observe, " that similes are not the language of a " man in his ordinary state of mind, dis- " patching his daily and usual work: for " that reason, the following speech of a gar- " dener to his servants is extremely impro- " per:

" Go, bind thou up yon dangling apricots
" Which, like unruly children, make their sire
" Stoop with oppression of their prodigal weight:
" Give some supportance to the bending twigs.
" Go thou, and, like an executioner,
" Cut off the heads of too fast growing sprays,
" That look too lofty in our commonwealth:
" All must be even in our government *.

" *Richard II.* Act III. Sc. 7.

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* The author's observation is perfectly just as a general proposition, and the illustration, if applied to it as such, is sufficiently happy: but the poet is not censurable here on the score of impropriety. He meant to shew, that in the period represented in this drama, such was the state of the times, that the miserable disorders of the realm were the universal theme of conversation, and engrossed the attention of the

" The fertility of Shakespeare's vein be-
" trays him frequently into this error.
" There is the same impropriety in another
" simile of his:

" *Hero.* Good Marg'ret run thee into the par-
" lour:
" There shalt thou find my cousin Beatrice:
" Whisper her ear, and tell her, I and Ursula
" Walk in the Orchard, and our whole discourse
" Is all of her: say that thou overheard'st us;

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the lowest of the people. The Queen, on seeing the gardener in conversation with his servants, says to her attendant,

" My wretchedness unto a row of pins,
" They'll talk of *state;* for every one doth so
" Against a change."————

And the servant, in reply to the gardener's figurative speech, answers with equal propriety,

" Why should we, in the compass of a pale,
" Keep law, and form and due proportion,
" Showing as in a model our firm state,
" When our sea-walled garden, the whole land
" Is full of weeds, her fairest flow'rs chok'd up,
" Her fruit-trees all unprun'd, her hedges ruin'd,
" Her knots disorder'd, and her wholesome herbs
" Swarming with caterpillars?"

" And bid her steal into the pleached bow'r
" Where honeysuckles ripen'd by the sun,
" Forbid the sun to enter; like to favourites
" Made proud by princes, that advance their pride
" Against that power that bred it.

" *Much ado about Nothing,*
" Act III. Sc. 1.

" Rooted grief, deep anguish, terror, re-
" morse, despair, and all the severe, dis-
" piriting passions, are declared enemies,
" perhaps not to figurative language in ge-
" neral, but undoubtedly to the pomp and
" solemnity of comparison.—Nothing ap-
" pears more out of place, nor more awk-
" wardly introduced than the following si-
" mile:

" *Lucia.* ———— Farewell, my Portius,
" Farewell, though death is in the word, *For-ever!*
" *Portius.* Stay, Lucia, stay; what dost thou say,
" *for-ever!*
" *Lucia.* Have I not sworn? If Portius thy suc-
" cess
" Must throw thy brother on his fate, farewell,
" Oh, how shall I repeat the word, *For-ever!*
" *Portius.* Thus, o'er the dying lamp, the un-
" steady flame
" Hangs quiv'ring on a point, leaps off by fits,
" And falls again, as loth to quit its hold.

" ——— Thou must not go, my soul still hovers
" o'er thee,
" And can't get loose.

" *Cato*, Act III. Sc. 2.

" A man spent and dispirited after losing " a battle, is not disposed to heighten or " illustrate his discourse by similes:

" *York*. With this we charg'd again; but out,
" alas!
" We bodg'd again; as I have seen a swan,
" With bootless labour swim against the tide,
" And spend her strength with overmatching
" waves.

" *3d Part of Henry VI.*
" Act I. Sc. 6.

" Queen Katharine, deserted by the King, " and in the deepest affliction upon her di- " vorce, could not be disposed to any sal- " lies of imagination: and for that reason, " the following simile, however beautiful " in the mouth of a spectator, is scarce pro- " per in her own:

" I am the most unhappy woman living,
" Shipwreck'd upon a kingdom, where no pity,
" No friends, no hope! no kindred weep for me!

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" Almost no grave allow'd me! like the lily
" That once was mistress of the field, and
" flourish'd,
" I'll hang my head, and perish.

" *King Henry VIII.*
" Act III. Sc. 1."

On the subject of comparisons, which are faulty in their own nature, he says: " The " strongest objection that can lie against a " comparison is, that it consists in words " only, not in sense. Such false coin, or " bastard wit, does extremely well in bur- " lesque; but it is far below the dignity of " the epic, or of any serious composition:

" The noble sister of Poplicola,
" The moon of Rome; chaste as the icicle
" That's curdled by the frost from purest snow,
" And hangs on Dian's temple.

" *Coriolanus*, Act v. Sc. 3.

" There is evidently no resemblance be- " tween an icicle and a woman, chaste or " unchaste: but chastity is cold in a meta- " phorical sense, and an icicle is cold in a " proper sense, and this verbal resemblance,

" in the hurry and glow of composition, " has been thought a sufficient foundation " for the simile*. Such phantom similes " are mere witticisms, which ought to have " no quarter, except where purposely intro- " duced to provoke laughter. Lucian, in " his dissertation on history, talking of a " certain author, makes the following com- " parison, which is verbal merely :

" This author's descriptions are so cold, that they " surpass the Caspian snow, and all the ice of the " North."

Utility of the work, independent of the rectitude of its theoretical opinions.

The foregoing examples are sufficient to give an idea of the method of disquisition and illustration pursued in the *Elements of Criticism*. It is very evident, that the justness of those particular opinions which the author has pronounced on the various objects of taste which he has reviewed, must

* This comparison bears no evidence of hurry of composition: it is elaborate and complicated; and has that sort of refinement, (especially in the latter part, where the icicle is figured hanging on *Dian's* temple), which is the fruit of thought: it is therefore to be set down purely to the score of bad taste.

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depend in a great measure on the rectitude of his theoretical principles; for if these happen in any instance to be erroneous, the canon is in that case untrue; and every criticism founded on the supposition of its truth, though not necessarily false, is in so far unsound, or must seek for support on some other principle than that which the author has assigned. But of the truth or rectitude of the theoretical principles, we have no other test than individual consciousness: every reader must judge by making the appeal to his own feelings; an appeal which indeed is the ultimate criterion of the truth or falsehood of all metaphysical opinions: for as these derive their origin from the consciousness of the writer, they draw assent no otherwise than as they are confirmed by the consciousness of the reader. It is the quality of a work of this nature, to make the reader judge for himself on every subject handled by the author; and therefore it has a manifest utility, whether the particular opinions it contains be just, or the contrary. They put the mind in a train of useful exercise; and if we detect the author in an error, we make so

far an advance towards the discovery of a truth *.

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* Thus, while I attend to the author's opinions on the subject of Humour, and on the distinguishing characteristics of humorous writing, I think I can perceive that his doctrine is erroneous; though perhaps the distinction I should wish to substitute in its place, may to others appear no less liable to objection. "Nothing just or proper" (says Lord Kames) "is denominated humour, nor any singularity of "character, words or actions, that is valued or respected. "When we attend to the character of an humourist, we find "that it arises from circumstances both risible and improper, "and therefore that it lessens the man in our esteem, and "makes him, in some measure, ridiculous." Of the same opinion is the author of the *Philosophy of Rhetoric*, who says, that "humour universally awakens contempt," and that "contempt is the passion which it addresses as its ob-"ject." Now, although it may be allowed, that in every thing justly called *humorous*, there is a singularity of character, which, as deviating from the general standard, may be termed improper, yet it cannot be so readily admitted, that it is the quality of that character to excite contempt. This latter emotion is universally attended with a degree of dislike or aversion: But a humorous character may, on the contrary, strongly conciliate our affection, our esteem, and even our respect. I instance the characters of *Sir Roger de Coverley* and *Isaac Bickerstaff*, in the *Spectator* and *Tatler*; and of *Uncle Toby* in *Tristram Shandy*. These characters excite no emotion of contempt. While we are amused by their ludicrous improprieties, we esteem and even respect them. The

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Certain disadvantages of this sort of criticism.

But however evident may be the general utility of this species of criticism, properly

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same is the case with *Tom Bowling*, and the Welshman *Morgan*, in *Roderick Random*. In these characters, humour is associated with a degree of dignity, which is absolutely exclusive of the emotion of contempt. It is no doubt true, that humour may occasionally be conjoined with meanness; as in the characters of *Falstaff*, *Bardolph*, *Captain Bobadil*: and in the latter instances, our contempt is excited along with our ludicrous emotions; but the preceding examples shew to demonstration, that this union is not, as has been supposed, essential: On the contrary, the displeasing ingredient of meanness in the latter characters, seems to lessen, and derogate from, the purer pleasure we receive from the equally ludicrous characters in which it has no place. To be highly pleased with the expression of any emotion, we must completely sympathise with the person who displays it: but the feeling of contempt is in a great degree hostile to sympathy. Where then lies the true characteristic of *humour*; and wherein is it essentially distinguished from *wit*? In my opinion, Congreve, whom Lord Kames has censured for his definition, has come the nearest to the truth, though he has not altogether reached it. "Humour" (says that author) "is a singular and unavoidable manner of doing or saying a thing; "peculiar, and natural to one man only, by which his speech "and actions are distinguished from those of other men." This definition contains nothing but what is true; but it does not contain the whole truth; and therefore it is not accurate or perfect. Lord Kames rightly observes, that "were this "definition just, a majestic and commanding air, which "is a singular property, would be humour; as also, a natural

termed Philosophical, it must be acknowledged that it has some disadvantages.—— By teaching that every judgment pronounced on any of the productions of the fine arts must rest on certain fixed principles of human nature, it has a tendency to substi-

"flow of correct and commanding eloquence, which is not "less singular." But this objection proves only, that Congreve's definition is too general, and that it will apply to other qualities, as well as to humour. The fault, therefore, lies in this, that some particular is wanting to the definition, which shall confine it to that quality alone; and this I apprehend we shall find, if to the requisite of singularity of character, we add that degree of impropriety or absurdity which moves laughter. This latter quality, as we have seen, is not necessarily allied to meanness, nor has it any proper tendency to excite contempt.——As to the distinction between humour and wit, we may observe, that a ludicrous impropriety may be equally characteristic of wit, as of humour: But humour is essentially distinguished from wit, by the circumstance noted by Congreve, namely, that humour always expresses a singularity of the human character; whereas wit consists in the unexpected association of ideas apparently incongruous, and is always a quality of thoughts and expressions.——If I am not mistaken, a great deal of the obscurity observable in the discussion of this subject, by various writers, has arisen from the want of a due attention to this distinction.

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tute reason and argument in the room of feeling, and to encourage a deceitful persuasion, that the conclusions of the understanding are at all times sufficient to enable us to form just opinions on all the objects of taste, without possessing any natural capacity, or inborn sensibility to the impressions of beauty or of grandeur which those objects are fitted to excite. It is forgotten, that it was the natural feeling of pleasure, from certain objects, and disgust or pain from others, that led philosophers to inquire into the causes of those emotions, and enabled them to find those causes in certain laws of our constitution; and it is vainly and presumptuously imagined, that the knowledge of those laws, which is to be acquired by study and reflection, is alone sufficient to direct the judgment in all matters of taste, independently of any extraordinary native sensibility;—a faculty of which such factitious critics are disposed either to deny the existence, because they feel it not in themselves, or to depreciate it as a blind and erring guide. Thus it happens, that the great body of the public, or at least that numerous class to whom the productions of

the fine arts form an object of attention, are, for the most part, guided in their judgments, and dictated to, by a set of literary pedants, who, without any superior portion of natural discernment or feeling, dogmatise in all matters of taste, and allow nothing to be excellent but what they pronounce to be so, after trial, by their metaphysical standard.

Another disadvantage attendant on this species of criticism, even where there is a native sensibility to the pleasures arising from the fine arts, is, that it gives rise to a sickly and fastidious delicacy of taste, and a difficulty of being pleased by any productions where there is a mixture of imperfection or irregularity: For, by laying down the laws of perfect composition, it awakens the attention, and sharpens the faculties of the *learned* critic to the perception of blemishes and defects, which, to another of equal, or perhaps superior feeling, but of less erudition, would have lain hid altogether, as overpowered, (and rightly so), by the prevalent impression of beauty or sub-

limity which truly belonged to the object surveyed. But this, it must be observed, is a disadvantage which cannot be said to belong exclusively to philosophical criticism; since it is the natural and obvious consequence of all regular criticism whatever; and results equally from that which appeals to the authoritative precepts of Aristotle and Bossu, as from that which ascends to metaphysical principles.

It is indeed an undeniable fact, that every species of critical examination into the merits and defects of any production of the fine arts, is in so far hostile to a lively sense of its beauties, that by giving occasion to an exercise of the judgment, it suspends for the time the impression made upon the feelings, and all that delightful play of the imagination, which arises in a mind of genuine sensibility, on its first attention to an object fitted to excite the emotions of sublimity or beauty. Criticism is a severe, and, if I may use the expression, an ascetic employment of the faculties, which demands a cool and dispassionate frame of mind, and a sobriety of thought remote from all enthu-

siasm; and where the habit of criticism prevails, the ardour of feeling is proportionally abated and subdued *. But, on the other

* This effect has been well remarked by an elegant writer, whose *Essay on the Nature and Principles of Taste* stands in the first rank among the works of philosophical criticism.

"When we sit down to appreciate the value of a poem, or "of a painting, and attend minutely to the language or composition of the one, or to the colouring or design of the "other, we feel no longer the delight which they at first produce. Our imagination in this employment is restrained, "and instead of yielding to its suggestions, we studiously "endeavour to resist them, by fixing our attention upon minute and partial circumstances of the composition. How "much this operation of the mind tends to diminish our "sense of its beauty, every one will feel, who attends to his "own thoughts on such an occasion, or who will recollect "how different was his state of mind, when he first felt the "beauty either of the painting or of the poem. It is this "chiefly which makes it so difficult for young people, possessed of imagination, to judge of the merits of any poem or "fable, and which induces them so often to give their approbation to compositions of little value. It is not, that "they are incapable of learning in what the merits of such "compositions consist, for these principles of judgment are "neither numerous nor abstruse. It is not that greater experience produces greater sensibility; for this every thing "contradicts; but it is, because every thing, in that period "of life, is able to excite their imaginations, and to move

BOOK II. hand, this moderation of our emotions is absolutely essential to the formation of a

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" their hearts, because they judge of the composition not by " its merits, when compared with other works, or by its ap- " proach to any abstract or ideal standard, but by its effect " in agitating their imaginations, and leading them into that " fairy land, in which the fancy of youth has so much de- " light to wander. It is their own imagination which has " the charm, which they attribute to the work that excites " it; and the simplest tale, or the poorest novel, is, at that " time, as capable of awakening it, as afterwards the elo- " quence of Virgil or Rousseau. All this, however, all this " flow of imagination, in which youth, and men of sensibi- " lity, are so apt to indulge, and which so often brings them " pleasure at the expence of their taste, the labour of criti- " cism destroys. The mind, in such an employment, in- " instead of being at liberty to follow whatever trains of " imagery the composition before it can excite, is either fet- " tered to the consideration of some of its minute and soli- " tary parts; or pauses amidst the rapidity of its concep- " tions, to make them the objects of its attention and review. " In these operations, accordingly, the emotion, whether of " beauty or sublimity, is lost; and if it is wished to be re- " called, it can only be done by relaxing this vigour of atten- " tion, and resigning ourselves again to the natural stream " of our thoughts. The mathematician who investigates the " demonstrations of the Newtonian philosophy, the painter " who studies the designs of Raphael, the poet who reasons " upon the measure of Milton, all, in such occupations, lose " the delight which these several productions can give; and " when they are willing to recover their emotion, must with-

good taste, which is not a simple and original endowment of the mind, but a compound faculty, the result of natural sensibility, and of judgment exercised in the weighing of means as adapted to their ends, in the comparing of objects, and observing their conformity in a regular work, to the laws of order, decorum, and congruity. Without this discipline of the mind, there may be much natural acuteness of feeling, and yet not a tincture of good taste; as we observe every day in children, and in rustics, who often exhibit most lively emotions from the productions of the imitative arts; but are pleased with a very small degree of excellence, and are insensible often to the grossest defects and improprieties. The pleasure enjoyed by the rude and uninstructed mind, is, no doubt, equally genuine, and may perhaps be equally acute with that which is the fruit of the most cultivated taste; but none surely will contend, that it

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"draw their attention from those minute considerations, and "leave their fancy to expatiate at will, amid all the great or "pleasing conceptions, which such productions of genius can "raise."—ALISON'S *Essay on the Nature and Principles of Taste*, p. 7.

BOOK II.

is alike dignified in its nature, or equally worthy of a rational being *.

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* Those distinct faculties of the mind which are necessary to the production of all the works of imagination that are fitted to give rational pleasure, and the separate function of each in the composition of such works, have been most happily described by the philosophic pen of D'Alembert, who, at the same time, combats a mistaken notion of very general currency, That the genius which creates, and the judgment which corrects and chastises, are frequently at variance, and instead of giving mutual aid, are often destructive of each other's power and operation. "Ajoutons qu'il n'est point à "craindre que la discussion et l'analyse émoussent le senti- "ment, ou refroidissent le génie dans ceux qui possedent "d'ailleurs ces précieux dons de la nature. Le philosophe "sait, que dans le moment de la production, le génie ne "veut aucune contrainte, qu'il aime à courir sans frein et "sans règle; à produire les monstrueux à côté du sublime, "à rouler impétueusement l'or et le limon tout ensemble. La "raison donne donc au génie qui crée une liberté entière, "elle lui permet de s'épuiser, jusqu'à ce qu'il ait besoin de "repos; comme ces coursiers fougueux, dont on ne vient à "bout qu'en les fatiguant. Alors il revient séverement sur "les productions du génie, elle conserve ce qui est l'effet du "véritable enthousiasme, elle proscrit ce qui est l'ouvrage de "la fougue, et c'est ainsi qu'elle fait éclorre les chefs-d'œu- "vres. Quel écrivain, s'il n'est pas entièrement dépourvu "de talent et de goût, n'a pas remarqué que dans la chaleur "de la composition, une partie de son esprit reste en quel- "que manière à l'écart, pour observer celle qui compose, et "pour lui laisser un libre cours, et qu'elle marque d'avance "ce qui doit être effacé."—D'ALEMBERT *Mélanges de Literat. et de Philos.*

CHAP. IV.

Nature of the author's taste.

I am led by the train of the preceding observations, here to take notice of a question which I have heard frequently canvassed, namely, whether the author of *Elements of Criticism* was really possessed of a great portion of native sensibility, and warmly awake to the emotions excited by the productions of the fine arts; or whether his taste was not rather the result of study, and of attention to those very rules and canons of criticism, which he had framed from a careful examination of those great productions of the fine arts of which the excellence is universally acknowledged. A presumption, it must be owned, arises from the very nature of his work, which displays a continued exercise of the reasoning powers, and the most minute and patient attention to the operations of the mind, that the man thus eminently qualified for the investigation of the laws which regulate our emotions, was not himself subject to those emotions in a very acute degree, of which a too lively feeling impedes for the time all capacity of speculating on their causes. A strong native sense of the sublime and beautiful is constantly attended with a degree of

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rapture and enthusiasm, which gives its tincture to all the thoughts and expressions of the man who possesses it, and prompts to impassioned eloquence whenever its objects are the matter of his discourse or writings *. Now the reader of the *Elements of Criticism* cannot fail to remark, that this criterion of feeling is wanting in that most ingenious work. It may, no doubt, be plausibly argued, that, as the author's undertaking demanded a spirit of cool and sober thought, and an exercise of the judgment, purged, if possible, from all allay of passion or enthusiasim, he made it a law to himself to avoid all rapturous expressions, and even to suppress the emotions that prompt them: but besides that it may reasonably be questioned whether such violence to the feelings were truly necessary, and, on the con-

* The composition of Longinus, contrasted with that of Aristotle, affords an apposite illustration. The impassioned diction of the former leaves no room to doubt that he possessed strong native feelings; while the cool and sober strain of investigation employed by the latter, who is never for a moment warmed by his subject, gives equal conviction of the absence of that genuine sensibility.

trary, were not in many places rather felt as a palpable defect than as an excellence, I am inclined to believe, that such a rigorous discipline of the feelings, supposing them to have much native strength, is utterly impracticable. They must at times have manifested themselves, in spite of every effort to repress them; *Naturam expellas furcâ licèt, usque recurret.* But when, to these presumptions, is added the positive proof arising from erroneous judgment in matters of taste, which we sometimes find in the *Elements of Criticism*; as, for example, the censure bestowed on the *Gothic architecture*, without the least notice of its striking beauties; and the equally unqualified panegyric of the *Mourning Bride* of Congreve, as the most perfect specimen of the English drama, without any reproof of its unnatural sentiments and bombast; this evidence seems to be decisive of the question, and to leave no room for doubt, that the general correctness of the author's taste was more the result of study and attention, than of any extraordinary sensibility in the structure of his mind to the emotions excited by the productions of the fine arts.

BOOK II.

Works proceeding from the school of Lord Kames.

Campbell's *Philosophy of Rhetoric.*

The science of philosophical criticism has been, with propriety, termed a *New Country*; and as it must be admitted that the author of *Elements of Criticism* was the first discoverer, so it may be observed to his honour, that he has made farther advances into the interior of that country than any traveller who has pursued the same track. This praise has been assigned him by one of the most able of his followers, I mean Dr CAMPBELL, the author of the *Philosophy of Rhetoric* *, who, in that useful work, has

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* In describing the progress of the critical art, Dr Campbell observes, "By the first step, (the examination of the "works of genius), the critic is supplied with materials. By "the second, these materials are distributed and classed: "the forms of argument, the tropes and figures of speech are "explained. By the third, the rules of composition are dis- "covered, or the method of combining and disposing the se- "veral materials. By the fourth, we arrive at that know- "ledge of human nature, which, besides its other advantages, "adds both weight and evidence to all precedent discoveries "and rules.—This last step may be said to bring us into a "*new country* of which, though there have been some suc- "cessful incursions occasionally made upon its frontiers, we "are not yet in full possession. The performance, which, "of all those I happen to be acquainted with, seems to have "advanced farthest in this way, is, *The Elements of Criti- "cism.*"—*Introduction to Philosophy of Rhetoric*, p. 18.—20.

successfully applied to the science which he treats, the same method of investigation which Lord Kames has prescribed and exemplified in tracing out the principles of a right judgment in all the works of genius and imagination. The *Philosophy of Rhetoric*, is a work modelled upon the plan of Aristotle's Treatise on that subject, in so far as it professes to delineate the human mind, as well in its active principles, as in its passions or moral feelings; and it involves, in addition to this plan, the application of these principles to the art of rhetoric, in all its branches; in the manner in which Lord Kames has applied them to the more comprehensive science of criticism in all the fine arts *. Both authors illustrate their theo-

* Dr Campbell, in his preface, observes, "It is his purpose in this work, on the one hand, to exhibit, he does not say a correct map, but a tolerable sketch of the human mind; and aided by the lights which the poet and the orator so amply furnish, to disclose its secret movements, tracing its principal channels of perception and action, as near as possible to their source: And, on the other hand, from the science of human nature, to ascertain with greater precision, the radical principles of that art, whose object it is, by the use of language, to operate on the soul of the hearer, in the way of informing, pleasing, moving, or persuading."—*Philosophy of Rhetoric*, Pref. p. 7.

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retical principles by the most copious examples drawn from the works of genius; and in the fitness and beauty of those illustrations, lies perhaps the most certain, as well as the most general utility, of their several labours. "No criticism," (says David Hume), "can be instructive which descends "not to particulars, and is not full of ex- "amples and illustrations *;" and it may be added, that none can be devoid of instruction which is so illustrated.

Mr Alison's Essay on Taste.

I have formerly alluded, in a note, to a work which bears a high character among those which treat of philosophical criticism; I mean Mr ALISON's *Essay on the Nature and Principles of Taste*. In this truly classical performance, the author has the merit of devising a new theory of the origin of our feelings of the sublime and beautiful. It is his opinion, that the emotions of sublimity and beauty depend altogether on the association of material with mental qualities: that no material objects are truly in them-

* HUME's *Essays*, vol. i. Essay 20. *On Simplicity and Refinement.*

selves either sublime or beautiful; but that the emotions thence arising, proceed entirely from the train of thought which those objects excite in the mind. The simple perception of the object may be pleasing, but it is insufficient to awaken those emotions of beauty or sublimity which amount to delight, unless it is accompanied with this operation of the mind; unless the imagination is seized, and the fancy busied in the contemplation of the chain of ideas which that object suggests. Thus, the sight of the ocean is no otherwise sublime, than as it excites in the mind a train of ideas of immensity, danger and uncontrollable power, which altogether produce the emotion of sublimity: the scenery of the country in spring, is no otherwise beautiful, than as it suggests a train of ideas of cheerfulness, gladness, tenderness and serene enjoyments. The author brings a positive proof of his proposition from an elaborate detail of the various trains of association which the qualities of objects are fitted to produce; and a negative demonstration, from the invariable phenomenon, that when these associations are

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dissolved, or when the material qualities cease to produce them, there is an end to the emotions of sublimity or beauty. On this theory, which rests upon one beautiful philosophic thought, and which is not only supported by great acuteness of reasoning, but by a surprising variety of ingenious and apposite illustrations, I shall only remark, that if there should still remain a doubt, whether the principle of association be, as the author supposes, absolutely exclusive of all others in the excitement of the emotions of beauty and sublimity, he has at least brought the most convincing evidence, that it has a very universal and powerful influence, both in the production, and in the improvement of those emotions.

Other works in philosophic criticism.

It were tedious to enter into a particular account of all the works of merit in the department of criticism which have proceeded from the same school; as, the *Essays of Dr Beattie on Poetry and Music*, and his *Illustrations on Sublimity*; *Dr Blair's Lectures on Rhetoric and the Belles Lettres*; the *Observations on Modern Gardening by Mr Whately*; *Mr Brown's Remarks on the Poetry and*

Music of the Italian Opera; the ingenious *Essays of Professor Richardson on Shakespeare's Dramatic Characters*; or the excellent specimens of similar disquisition by *Mr Mackenzie*, and other writers, in the *Mirror* and *Lounger* *. From these and other recent works of taste, it will be seen, that criticism has of late years assumed a new character, and is now as generally associated with philosophy, as formerly it was limited to mechanical rules, or didactic precepts, resting on the sole foundation of authority, and the practice of the ancient writers.

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* To these I add two works lately published, *An Analytical Inquiry into the Principles of Taste*, by Mr Payne Knight, printed in 1807; and *Essays on the Sources of the Pleasure received from Literary Compositions*, printed in 1809, both of them acute and ingenious productions, and entering deeply into the principles of Philosophical Criticism.

END OF VOLUME FIRST.

Specimens of Lord Kames's handwriting.

1. From a Common-place Book written probably about 1725.

Aristotle sets the Misery of a Vitious Constitution in a beautiful & uncommon Light. After shewing that Friendship can be only truely founded in Virtue; he draws it as a consequence that a Wicked man cannot have any real Esteem or Friendship for himself. but on the contrary, that a clear View of his own Deformity and Depravity, must necessarily create Disgust if not Hatred. Now what a Life must that Wretch lead who is thus with himself in continual Enmity?

2. From detached notes written about 1755.

Having a prospect of some curious matter in dissecting this Subject, I beg permission of the Reader to amuse myself with it at leisure. Several ingenious Writers have attempted to account for this singular fact, but in vain according to my Judgement

3. Inscribed on a copy of Remarkable Decisions of the Court of Session Published in 1766.

To his kindly Friend and chearful Companion
Mr William Tytler
Presented by the Compiler
Henry Home

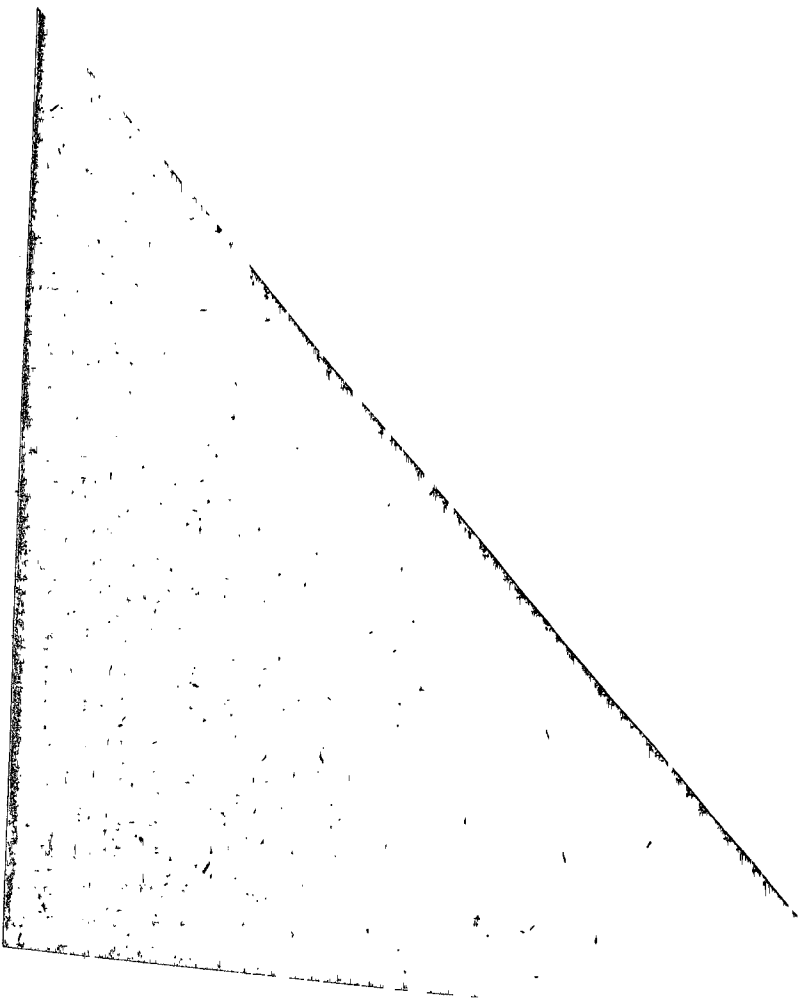
1. From detached notes written in 1772.

In old times every nation had Bards before writing was common. Men naturally relish stories of their own species, and it enhances greatly the pleasure to have such stories put in such a measure as to be accompanied with Music: a plain story of that kind was agreeable: it was enchanting when the voice was accompanied with the harp or other musical instrument. It required an ear, a voice, and some skill in instrumental music to excel in such a performance, the talents which fell to the share of few. Hence the profession of a Bard who was in great repute and an essential member in every festival and in every meeting for amusement.

2. Subscription to a Letter dated 12th. April 1770.

Yours while I know myself
to be
Henry Home

00023562



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